

New service applicable for- MAY/ NOV 2011

INDIRECT TAX COMING BATCHES

	Start DATE	ENDING DATE
BATCH- 1	4 TH Apr 2011(DAILY EXCEPT SUN) (6-30 to 10-30 a.m)	26 TH May 2011
BATCH- 2	30 TH May 2011(M,W,F) (6-30 to 10-30 a.m)	30 TH Sep 2011

Satellite batch – at 100 + centres all over India	May end
BATCH- 3	25 th Feb 2011 (M,W,F,S) (5-30 to 8-30 p.m)

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Dear Students

Earlier 32 services was applicable for CA final for Nov 2010, but for May 2011 & Nov 2011, question can be asked from 28 services. The list is given BELOW. 17 new services are included in course which are shown in yellow shaded portion in the beginning. 11 services are from Nov 2010. Hence as a helping hand, I have compiled the new services (16) for your ready reference. Practical question for each service has also been given alongwith solution on the basis of ICAI is asking questions. Works contract service was already given in Old Notes.

Further amendments are also made in excise, custom and service tax for May 2011. If u need those amendments, then plz mail to camanojbatra@gmail.com or idtquery@gmail.com

Last time I have given Expected Case law , amendment booklet from which in Nov 2010 exams - in old course- 49 marks, new course- 46 marks paper was from that booklet. This time that book will be released for May 2011 at the end of March 2011

Further we are planning to take amendment class all over India through Satellite- **free of cost**, either in the beginning of Feb 2011 or at the end of March 2011. Students interested in taking classes, can mail there Name, contact Number, email- id, city – so that we can arrange the classes accordingly. plz mail to camanojbatra@gmail.com or idtquery@gmail.com

Applicability of services for May 2011 & Nov 2011- CA Final

1. Copy right service
2. Transport of air passenger service
3. Transport of coastal goods and other goods through inland water including national waterways
4. Port (Major port & other port) service
5. Airport service
6. Tour operator
7. Health care service
8. Promotion of brand
9. Erection, commissioning & installation service
10. Services of renting of immovable property
11. Advertising service
12. Preferential location service
13. Asset management including portfolio management and all forms of fund management
14. Mining service
15. Management, maintenance or repair service
16. Telecommunication service
17. Service provided in execution of works contract
18. Intellectual property services
19. Banking & other financial services
20. Goods transport agency's services
21. Transport of goods by air services
22. Transport of goods by rail
23. Construction of commercial or industrial buildings or civil structures
24. Construction services in respect of residential complexes
25. Site preparation and clearance, excavation, earthmoving and demolition services
26. Clearing and forwarding services
27. Business auxiliary services
28. Business support services

RANKHOLDERS



C.W.A Rankholders

Ravi Shankar - 31st Rank
 Sumit Gupta - 48th Rank
 Ankit - 60th Rank
 Navin - 70 Marks

_____Space Waiting for U

(1) Copyright services

(i) Taxable service

Means any service provided or to be provided to any person, by any other person, for—

- (a) transferring temporarily; or
- (b) permitting the use or enjoyment of,

any copyright defined in the Copyright Act, 1957

EXCEPT the rights covered under sub-clause (a) of clause (1) of section 13 of the said Act;

(ii) The provisions relating to copyrights are governed by the Indian Copyright Act, 1957.

Section 13(1) of the Indian Copyrights Act, 1957 provides that the copyright subsists in the following classes of works:- (a) Original literary, dramatic, musical and artistic works; (b) Recording of cinematographic films; (c) Sound recordings.

Author note- Category (a) above has been kept out of the tax net **WHILE** Category (b) and (c) have been made taxable under this service.

Following activities have been brought under the service tax net:-

- ⇒ transferring the right of recording of the cinematographic film and recording of sound track or
- ⇒ permitting the use of cinematographic film and sound track by another person (say distributor) for consideration

(iii) department clarification

Services related to two types of copyrights hitherto not covered under existing taxable service

'Intellectual Property Right (IPR)', namely, that on (a) cinematographic films and (b) sound recording.

– 334/1/2010

- (1) The right to temporarily transfer or permit the use of Intellectual Property Rights (IPR), namely, trademarks, designs and patents was brought under tax net in 2004. However, one of the IPRs, i.e. copyright has been specifically kept out of the purview of the tax **with an intent to encourage authors and artists**, as it involves creative works, such as literary work, musical work and artistic work. **In Budget 2008**, Information Technology (IT) Software Service was also brought under tax net, which apart from involving development, upgradation, assistance etc. also covered the IPR aspect i.e. right to use the information technology.
- (2) A cinematographic film means any work of visual recording on **any medium** (emphasis added) produced through a process from which a moving image may be produced. The same may be accompanied with sound reproduction also.

Both the recording of the cinematographic film and the accompanying sound track are the property of the producer, who can temporarily transfer it or permit its use by another person for a consideration. It is this activity, which is being taxed under this service.

It would have an impact on the royalty payments on both imported and indigenously produced films when the producer/right holder allows such use to another person, say the distributor.

- (3) Similarly, song, its music, lyrics and composition also enjoy the copyright protection to its owner who can commercially exploit it in the manner stated above. Normally, the copyright of music vests in the composer and the copyright of music recorded vests in the producer of the sound recording. It is possible that a lyricist or a singer may hold copyright for the words of a song or the song itself.

Merely allowing that song to be recorded is a copyright, which would fall under category (a) of section 13 of the Copyright Act and thus would not be subject to service tax.

However, after the performer has transferred his rights to a sound recording company, the sound recording company acquires the copyright mentioned in category (c) of section 13 supra. It is the transfer or allowing use of this right, which would be subjected to tax under the new service.

As such, depending upon the nature and conditions of the contract, companies distributing music, owners of copyright of cinematographic films etc. would be prospective taxpayers. It may be noted that this taxable service will not cover individual artists, composers, performers etc. as their copyrights fall under clause (a) of Sec. 13 of the Copyright Act.

Particulars	Rs. In Lakh
PVR Produced Film "Tare Zameen Par" and leased to various distributor for	75
PVR taken over the distribution rights of "Ghajini", "Don" for Rs. 300 lakh and allowed use or enjoyment to various theatres on sharing basis for	400
PVR have taken rights of Aviator from Foreign company to make CD/DVD for	200
PVR has recorded songs for various singers like Lata Mangeshkar, Sonu Nigam and allowed to use to	
Internet sites	5 lakh
Music distribution company	23 lakh
Bala ji Telefilms to use the sound in its serial	2 lakh
To channel to broadcast to various home viewers	25 lakh
	55
	730

Calculate Value of taxable service

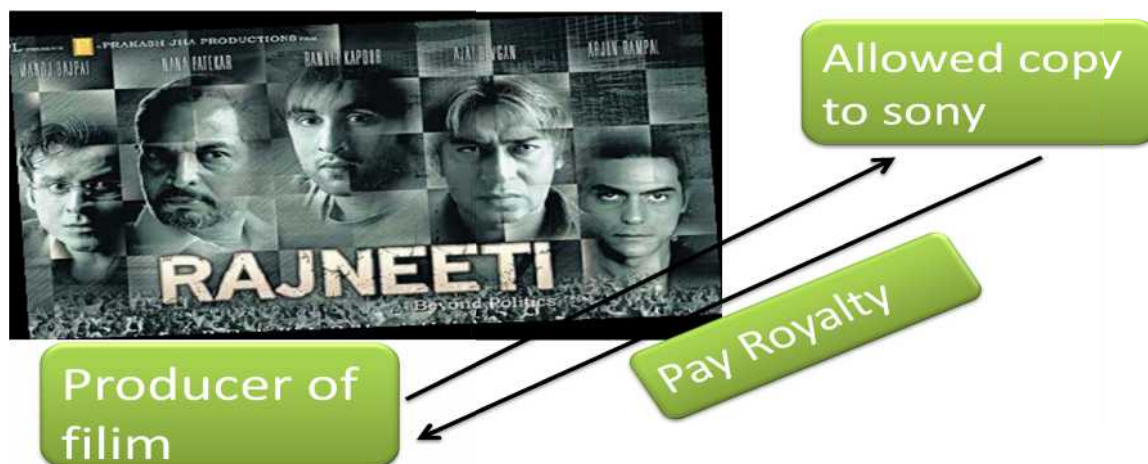
Ans

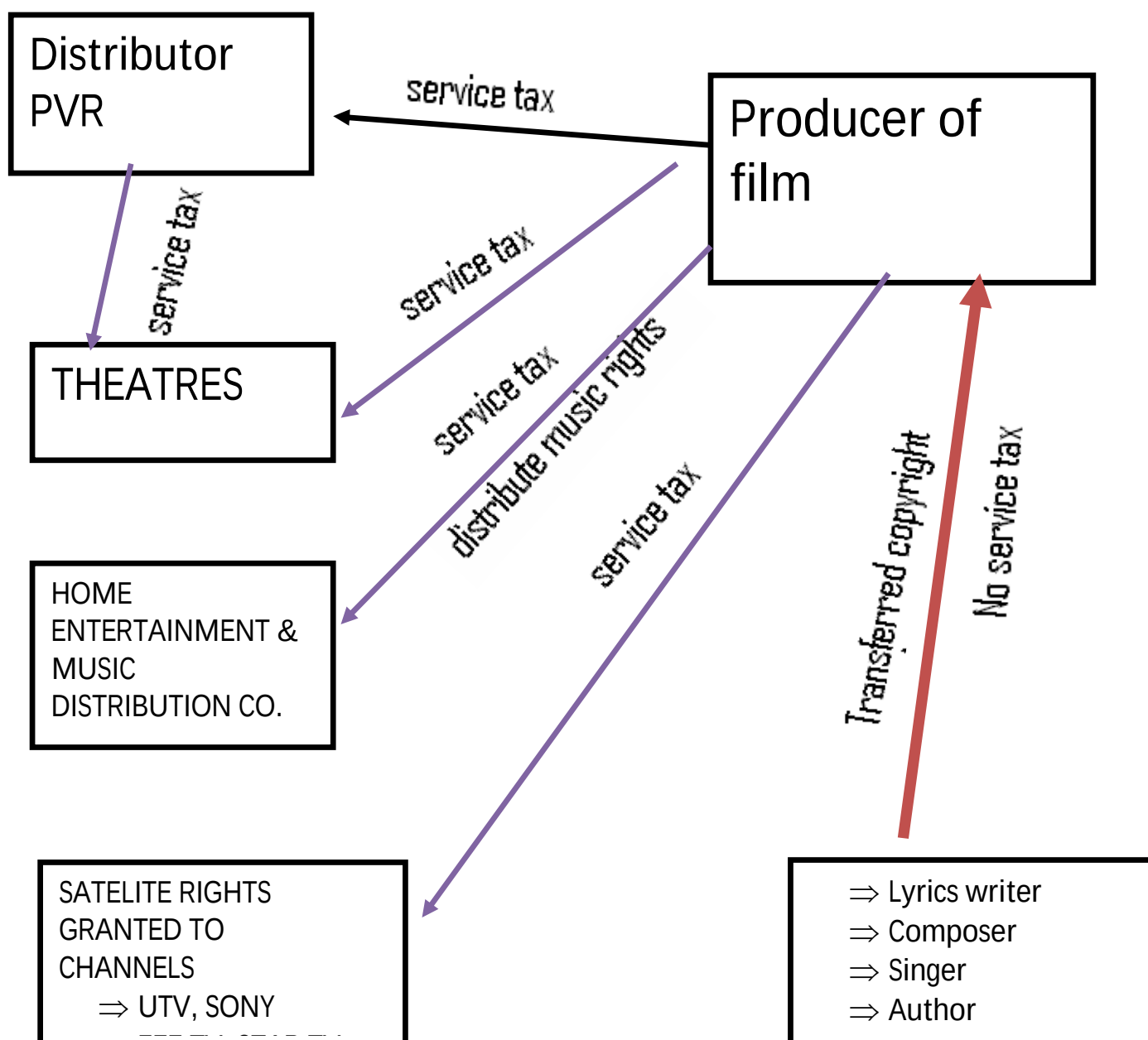
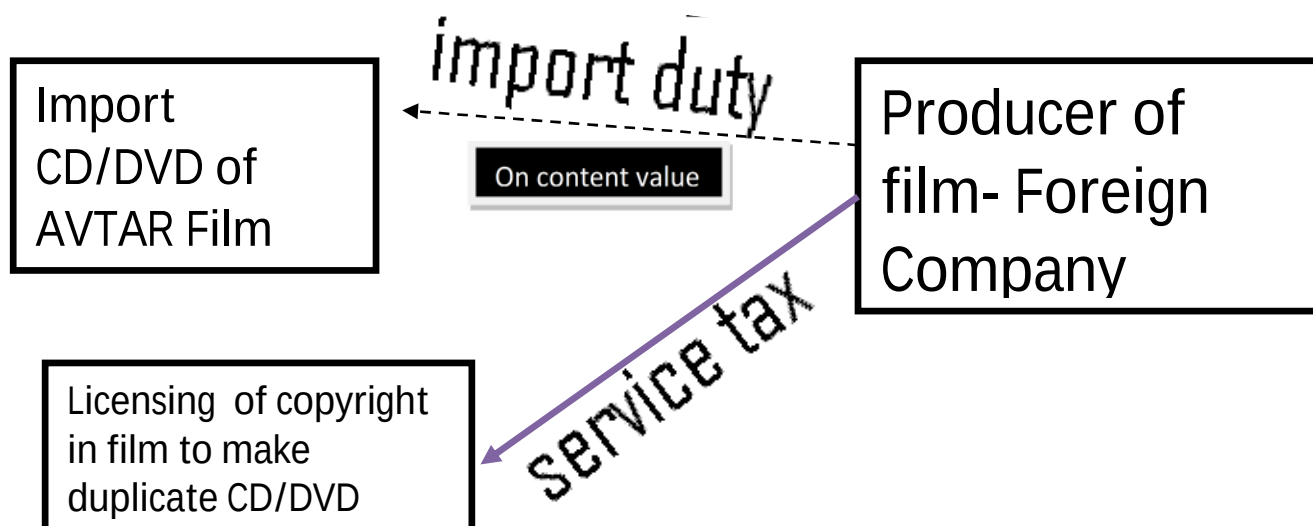
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Value of taxable service	730

WHETHER SERVICE TAX LEVIABLE ?



COPY OF FILM/ AUDIO/VIDEO RECORDING





(2) TRANSPORT OF PASSENGERS FOR JOURNEY (DOMESTIC OR INTERNATIONAL) BY AIR

(i) Taxable service

Means any service provided or to be provided to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for domestic journey or international journey;]

Non- scheduled flight means that do not leave at a fix time or flights that are being flown at short notice, like chartered flights, military flights or for Tour

Explanation 1 — For the purposes of this sub-clause, **economy class** in an aircraft meant for **scheduled air** transport of passengers means, —

- (i) where there is more than one class of travel, the class attracting the lowest standard fare; or
- (ii) where there is only one class of travel, that class.

Explanation 2. — For the purposes of this sub-clause, in an aircraft meant for **non-scheduled air** transport of passengers, no class of travel shall be treated as economy class;

(ii) DEFINITIONS

“INTERNATIONAL JOURNEY”, in relation to a passenger, means his journey from any customs airport on board any aircraft to a place outside India;]

“PASSENGER” means any person boarding an aircraft in India for performing domestic journey or international journey;]

(iii) Exclusion from Value- Rule 6 (2)(v) of Service Tax (Determination of value) rules 2006

The value of any taxable service, as the case may be, does not include -
the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.]

(iv) EXEMPTIONS

(1) Travel by Air service — Exemption to in-transit international passenger and other specified persons w.e.f. 1-7-2010— [Notification No. 25/2010-S.T., dated 22-6-2010]

CG exempts air transport of passengers in respect of persons specified below, from the whole of the service tax leviable thereon under section 66 of the Finance Act,-

- (i) a person who has arrived at a customs airport from a place outside India and is in transit through India, provided that he does not pass through immigration and does not leave customs area and continues his journey to a place outside India; and
- (ii) a person employed or engaged by the aircraft operator in any capacity on board the aircraft;

(2) Travel by Air service — Exemption providing effective rate for domestic journey in any class and international journey in economy class w.e.f. 1-7-10— [Notification No. 26/2010-S.T., dated 22-6-2010]

CG Exempts from so much of service tax as is in excess of,-

- (a) ten percent of the gross value of the ticket or rupees one hundred per journey, whichever is less, for passengers **travelling in any class, WITHIN INDIA;**
- (b) ten percent of the gross value of the ticket or rupees five hundred per journey, whichever is less, for passengers embarking in India for an **international journey** in **ECONOMY CLASS :**

Provided that this exemption shall not apply in cases where -

the credit of duty paid on inputs used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004;

Explanation. - For the purposes of this notification, economy class in an aircraft means, —

- (i) where there is more than one class of travel, the class attracting the lowest standard fare; or
- (ii) where there is only one class of travel, that class.

**(3) Travel by Air service — Exemption to passengers from/to North East and Bagdogra w.e.f. 1-7-2010-
— [Notification No. 27/2010-S.T., dated 22-6-2010]**

CG exempts the taxable service for passengers embarking on a journey originating or terminating in an airport located in the state of Arunachal Pradesh or Assam or Manipur or Meghalaya or Mizoram or Nagaland or Sikkim or Tripura or at Bagdogra located in West Bengal, from the whole of service tax leviable thereon under section 66 of the said Act.

(v) CBEC CLARIFICATION

a) Transport of passenger by Air service : 334/3/2010

- (1)** As stated in 334/1/2010-TRU, dated 26th February 2010, in Budget 2010, service tax on transport of passengers by air was extended to cover all domestic and international air passengers embarking in India with effective tax rates as given below :

- (a) 10% service tax of the gross value of the ticket or **rupees 100 per journey**, whichever is less, for passengers travelling in any class, within India;
- (b) 10% service tax of the gross value of the ticket or **rupees 500 per journey**, whichever is less, for passengers embarking in India for an international journey in economy class :

The aforesaid rates are subject to non-availment of Cenvat credit. (Refer Notification No. 26/2010-Service Tax dated 22nd June 2010). All charges except statutory levies (levied under a law for time being in force), if any mentioned in a ticket is to be taken as 'gross value of the ticket' for this purposes.

- (2)** Exemption from service tax has also been provided on journeys to and from North-Eastern States (i.e. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura) from the service tax (Refer Notification 27/2010-Service Tax date 22nd June 2010). Considering that Bagdogra airport, though located in West Bengal being the gateway airport for Sikkim, has also been accorded this benefit.
- (3)** Doubts have been raised that in case a ticket covers more than one domestic journey/flight/sector (say Mumbai-Delhi-Mumbai), whether Rs. one hundred would be charged for each journey/flight/sector (i.e. in the aforementioned example one for Delhi-Mumbai flight and one for Mumbai-Delhi flight) or would it be charged once for the entire ticket. In this regard, it is clarified that since the taxable activity relates to 'embarkation in India for domestic journey....', each time such embarkation in India takes place the tax is chargeable. In other words tax would be separately chargeable for each journey/flight/sector. In this regard the clarifications issued vide circular No. 96/7/2007-S.T. dated 23-7-2007 has no application as the said circular did not cover situations of multiple embarkations in India. Similarly, in round trip tickets involving multiple journeys/flights/sectors with one of the sector involving embarkation or disembarkation at North-Eastern States/Bagdogra, the journey/flight/sector that involves embarkation or disembarkation at North-Eastern States/Bagdogra would alone be covered under aforesaid exemption.
- (4)** Since the scope of air transport of passenger service has been modified vide Finance Act, exemption, which were available earlier to crew of the aircraft operator, and international transit passengers by way of definition in the Act have been retained vide Notification (Refer Notification No. 25/2010-Service Tax).
- (5)** The scheme of tax on passengers embarking in India for an international journey in higher classes (i.e. other than economy class) remains unchanged.
- (6)** As per the provisions of Rule 4A of the Service Tax Rules, 1994, invoice/bill/challan is required to be issued by the provider of taxable service within 14 days of the provision of the taxable service or the receipt of the consideration. In case of air-travel, the airlines or the agent may not issue a separate invoice to the

passenger but may issue the ticket showing the price of such ticket as well. In such a case, the requirement of an invoice would cast an additional compliance burden on the service provider. Hence the said rule is amended to provide that in case of this taxable service, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey (details like place of embarking and disembarking, class of travel, flight number, etc.,) and the amount of service tax collected would be deemed to be the invoice/bill/challan for the purposes of the rule (Refer Notification No. 39/2010-Service Tax as corrected vide corrigendum dated 30th July 2010).

b) 96/7/2007

An international journey commencing from an Indian airport involves stopover/ transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York). Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?	Aim of the passenger is to travel from Mumbai to New York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover/transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66. Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey. i.e., value indicated on the ticket for the entire journey.
An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector (Delhi – Mumbai) as part of the international journey. Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector from the total value of the ticket?	In this case, the journey is a single composite journey. The aim of the passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the domestic sector as integral part of the international journey without excluding the value attributable, if any, to travel in the domestic sector.
An international journey commences from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney). Whether service tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?	In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India, service tax is not leviable under section 65(105)(zzzo).
Whether ticket issued outside India for an international journey commencing from India (say Delhi-London) is liable to service tax?	Service tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66. Service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class.
Whether service tax is liable on the total value of the ticket or only half the value of the ticket in the case of round trip/return ticket (say Delhi-London-Delhi)?	Service tax is leviable on the total value of the ticket.

c) **International Air Travel** — Inclusion of YQ and YR charges clarified

Commissionerate of Service Tax, Delhi, dated 24-9-2007

the Board has clarified that YQ and YR charges collected by the Airlines from the passengers are includible in the value of taxable service provided by aircraft operator to passenger embarking in India for international journey.

The clarification reads as under

“ As per section 67 of the Finance Act, 1994, value of a taxable service shall be the gross amount charged by the service provider for the services provided and includes any amount received towards the taxable service before, during or after provision of such service. Provisions relating to determination of the value of taxable service contained in Service Tax (Determination of Value) Rules, 2006 are clear and unambiguous. As YQ and YR charges are integral part of the consideration received for the services provided, method of vivisectioning may not be of any relevance as long as the amount is in the nature of the consideration paid for the services provided.”

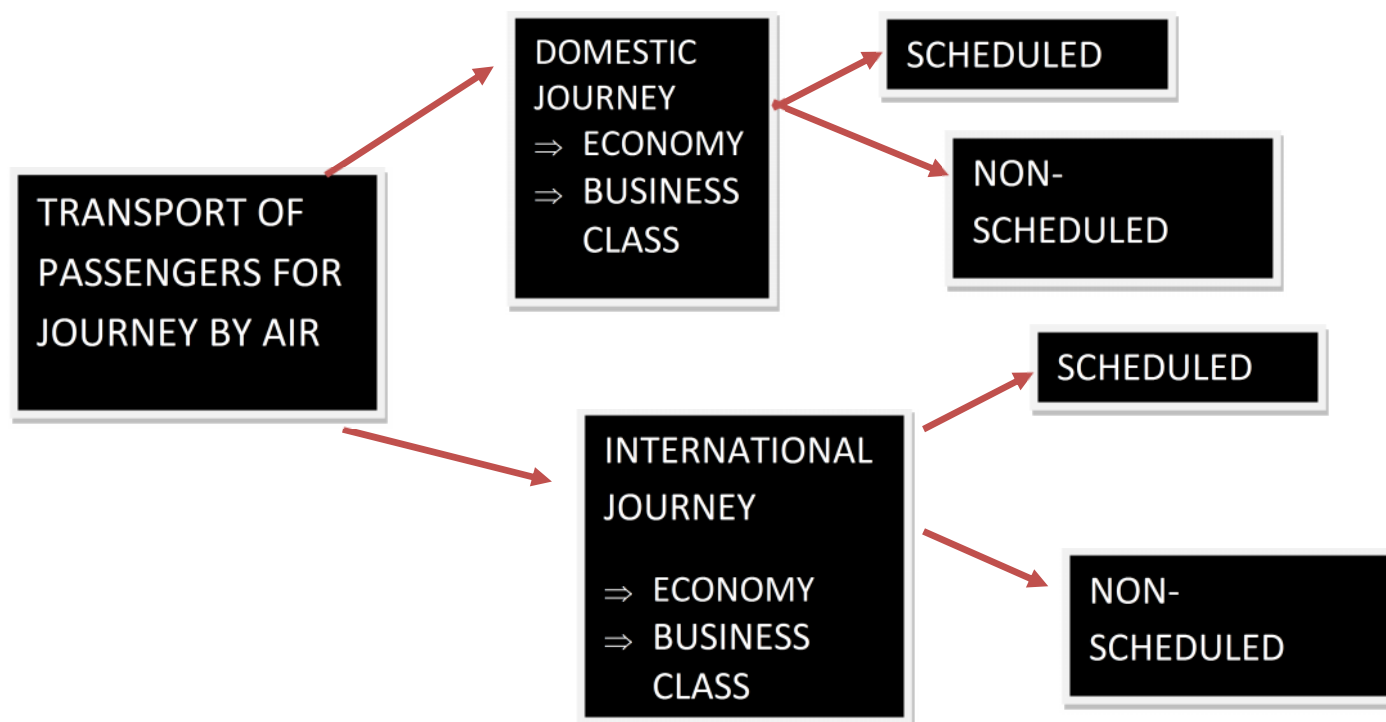
M/s kingfisher Airlines provides following details	
2000 Passenger travelling from Delhi to Mumbai in economy class. Gross value per ticket Rs 1050 Tax on ticket Rs. 100 included in above.	
3000 Passenger travelling from Delhi to Mumbai in business class. Gross value per ticket Rs 1050 Tax on ticket Rs. 100 included in above.	
4000 Passenger travelling from Delhi to Mumbai in economy/ business class. Gross value per ticket Rs 1100. Tax on ticket Rs. 100 not included in above.	
1000 Passenger embarking from Delhi to U.S.A in economy class. Gross value per ticket Rs 4950	
1000 Passenger embarking from Delhi to U.S.A in BUSINESS class. Gross value per ticket Rs 4950 YQ, YR Charges Rs. 2000 included in gross value of ticket	
2500 passenger booking for Round Trip MUMBAI — DELHI — MUMBAI Gross value of ticket Mumbai- Delhi Rs 950 Delhi – Mumbai Rs 950	
2500 passenger booking for Round Trip MUMBAI — DELHI — MUMBAI Gross value of ticket Mumbai- Delhi Rs 1100 Delhi – Mumbai Rs 1100	
2000 passenger booking from Manipur to Delhi. Gross value per ticket Rs 950	
2000 passenger booking from Delhi to Sikkim. Gross value per ticket Rs 1100	
2500 passenger booking for Round Trip MUMBAI — DELHI — London in economy class. Gross value of ticket Mumbai- Delhi Rs 1100 Delhi – London Rs 5500	

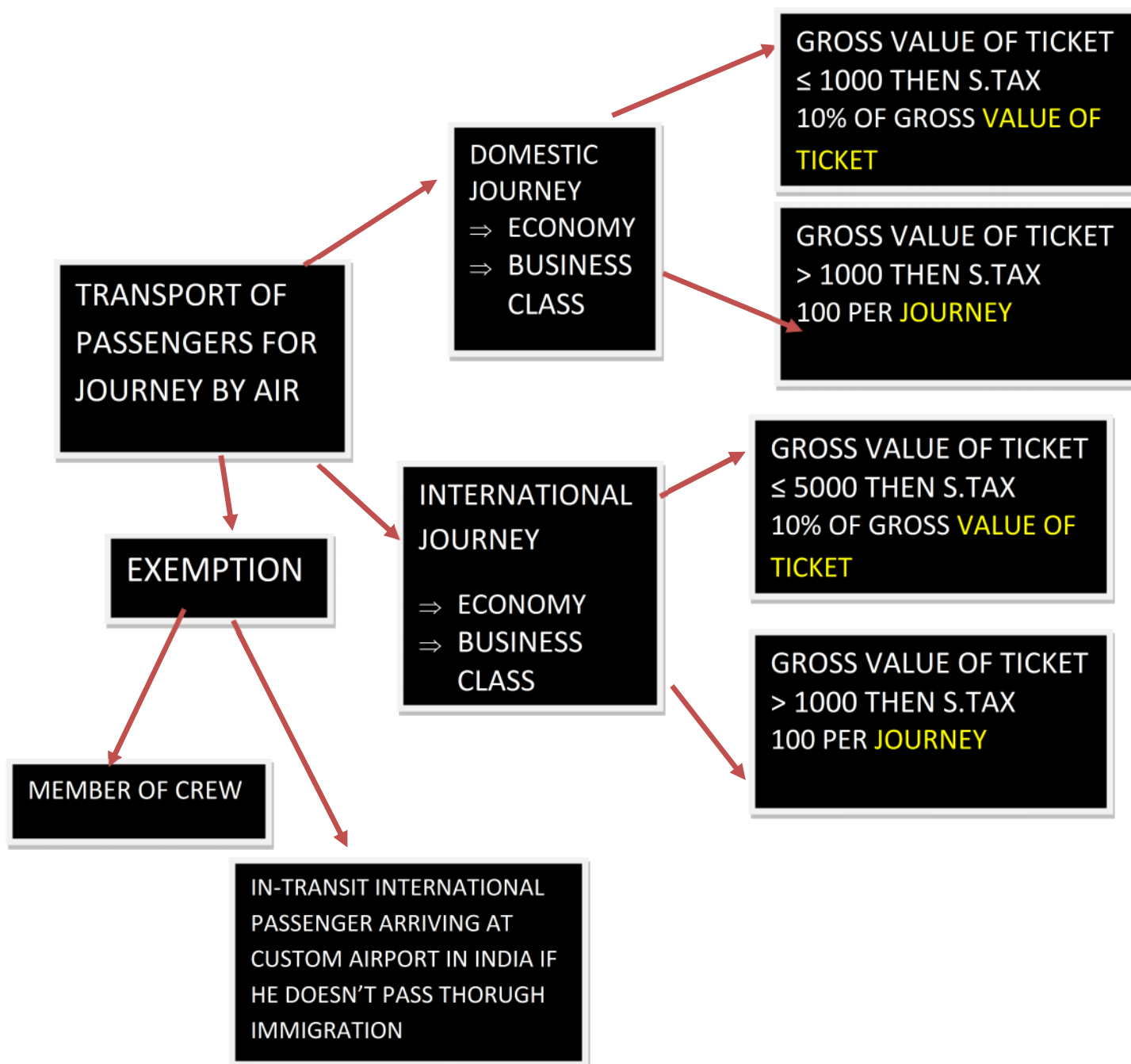
Calculate Value of taxable service

Ans

Particulars	Amt
2000 Passenger travelling from Delhi to Mumbai in economy class. Gross value per ticket Rs 1050 Tax on ticket Rs. 100 included in above. [95 × 2000]	190000
3000 Passenger travelling from Delhi to Mumbai in business class. Gross value per	285000

ticket Rs 1050 Tax on ticket Rs. 100 included in above. $[95 \times 3000]$	
4000 Passenger travelling from Delhi to Mumbai in economy/ business class. Gross value per ticket Rs 1100. Tax on ticket Rs. 90 not included in above. $[4000 \times 100]$	400000
1000 Passenger embarking from Delhi to U.S.A in economy class. Gross value per ticket Rs 4950 $[495 \times 1000]$	495000
1000 Passenger embarking from Delhi to U.S.A in BUSINESS class. Gross value per ticket Rs5950 YQ, YR Charges Rs. 50 not included in gross value of ticket $[600 \times 1000]$	600000
2500 passenger booking for Round Trip MUMBAI — DELHI — MUMBAI Gross value of ticket Mumbai- Delhi Rs 950 Delhi – Mumbai Rs 950 $[2500 \times 190]$	475000
2500 passenger booking for Round Trip MUMBAI — DELHI — MUMBAI Gross value of ticket Mumbai- Delhi Rs 1100 Delhi – Mumbai Rs 1100 $[2500 \times 200]$	500000
2000 passenger booking from Manipur to Delhi. Gross value per ticket Rs 950	-----
2000 passenger booking from Delhi to Sikkim. Gross value per ticket Rs 1100	-----
2500 passenger booking for Round Trip MUMBAI — DELHI — London in economy class. Gross value of ticket Mumbai- Delhi Rs 1100 Delhi – London Rs 5500 $[2500 \times 100 + 500 \times 2500]$	1500000
Value of taxable service	4445000





(3) TRANSPORT OF COASTAL GOODS OR TRANSPORT OF GOODS THROUGH NATIONAL OR INLAND WATERWAYS

(i) Taxable service

Means any service provided or to be provided to any person, by any other person, in relation to transport of —

- (i) coastal goods;
- (ii) goods through national waterway; or
- (iii) goods through inland water.

Explanation. — For the purposes of this sub-clause,—

- (a) “coastal goods” has the meaning assigned to it in clause (7) of section 2 of the Customs Act, 1962
- (b) “national waterway” has the meaning assigned to it in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985
- (c) “inland water” has the meaning assigned to it in clause (b) of section 2 of the Inland Vessels Act, 1917

(ii) EXEMPTION

**Transport of goods through national waterway & inland waterway & transport of coastal goods —
Exemption to specified goods w.e.f. 1-9-2009-[Notification No. 30/2009-S.T., dated 31-8-2009]**

CG exempts the taxable service provided to any person in relation to the transport of goods, OF the FOLLOWING description, through national waterway, inland water and coastal shipping from the whole of service tax leviable thereon under Section 66 of the said Act.

TABLE

Sl. No.	Description of Goods
(1)	(2)
1.	Foodstuffs including edible oil seeds and edible oils; food grains (cereals and pulses) and flours; fruits, vegetables and flowers; agricultural, fishery, marine produce; meat and poultry; water; tea and coffee; salt, sugar, sugarcane; grocery; milk and milk products; livestock and cattle fodder; dhoties, sarees and voils; Long cloth, sheeting
2.	Fertilizer whether inorganic, organic or mixed;
3.	Petroleum and petroleum products;
4.	Hank yarn made wholly from cotton;
5.	Raw jute and jute textile;
6.	Seeds of food crops and seeds of fruits and vegetables; seeds of cattle fodder and jute seeds;
7.	Medicine/pharmaceutical products;
8.	Relief materials meant for victims of natural or manmade disasters, calamities, accidents and mishap;
9.	Defence/military equipments.
10.	Luggage of passengers, whether carried as personal luggage in the ship or booked separately as consignment/postal mail/mail bags/Household effects

Sl. No.	Description of Goods
(1)	(2)
11.	Newspaper/magazines registered with Registrar of Newspapers

M/s ABC Shipping Company charges for transport of goods through national or inland waterways Rs. 250 lakh. It includes the following.

Particulars	Rs. In Lakh
Transport of edible oils, cereal and pulses	25
Transport of vegetable, fruits, tea & coffee, salt, sugar, water and milk	40
Transport of petroleum products	70
Transport of machinery	35
Transport of raw jute & jute textile	10
Transport of medicines	15
Transport of defence & Military equipments	5

Calculate value of taxable service

Particulars	Rs. In Lakh	Rs. In Lakh
Gross amount recovered		250
Less-		
Transport of edible oils, cereal and pulses	25	
Transport of vegetable, fruits, tea & coffee, salt, sugar, water and milk	40	
Transport of petroleum products	70	
Transport of machinery	---	
Transport of raw jute & jute textile	10	
Transport of medicines	15	
Transport of defence & Military equipments	5	165
Value of taxable service		85

India has an extensive network of inland waterways in the form of [rivers](#), [canals](#), [backwaters](#) and [creeks](#). The total navigable length is 14,500 kilometres (9,000 mi), out of which about 5,200 km (3,231 mi) of river and 485 km (301 mi) of canals can be used by mechanised crafts.^[118] Freight transport by waterways is highly underutilised in India compared to other large countries. The total cargo moved by inland waterways is just 0.15% of the total inland traffic in India. Cargo transport in an organised manner is confined to a few waterways in [Goa](#), [West Bengal](#), [Assam](#) and [Kerala](#). The Inland Waterways Authority of India (IWAI) is the statutory authority in charge of the waterways in India. It does the function of building the necessary infrastructure in these waterways, surveying the economic feasibility of new projects and also administration and regulation. The following waterways have been declared as National Waterways:

1. National Waterway 1 - [Allahabad](#) - [Haldia](#) stretch of the [Ganges](#) - [Bhagirathi](#) - [Hooghly](#) river system with a total length of 1,620 kilometres (1,010 mi) in October 1986.^[120]
2. National Waterway 2 - [Saidiya](#) - [Dhubri](#) stretch of the [Brahmaputra](#) river system with a total length of 891 kilometres (554 mi) in 1988
3. National Waterway 3 - [Kollam](#) - [Kottapuram](#) stretch of the West Coast Canal along with Champakara and Udyogmandal canals, with a total length of 205 kilometres (127 mi) in 1993.
4. National Waterway 4 - [Bhadrachalam](#) - [Rajahmundry](#) and [Wazirabad](#) - [Vijaywada](#) stretch of the [Krishna](#) - [Godavari](#) river system along with the [Kakinada](#) - [Puducherry](#) canal network, with a total length of 1,095 km (680 mi) in 2007.
5. National Waterway 5 - [Mangalgadi](#) - [Paradeep](#) and [Talcher](#) - [Dhamara](#) stretch of the [Mahanadi](#) - [Brahmani river](#) system along with the East Coast Canal, with a total length of 623 km (387 mi) in 2007
6. [National Waterway 6 \(India\)](#) Lakhimpur to Bhanga of river Barak. {**Proposed**} Length = 121 km



(4) Port (Major port & other port) service

(i) Taxable service in respect of Major port

Means any service provided or to be provided

to any person, by any other person, in relation to port services in a port, in any manner :

Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the port;]

Taxable service in respect of other port

Means any service provided or to be provided

to any person, by any other person, in relation to port services in other port, in any manner :

Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within other port;]

(ii) DEFINITIONS

“port” has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963
i.e port means any Major port to which the Major Port Trusts Act, 1963 applies.

“other port” has the meaning assigned to “port” in clause (4) of section 3 of the Indian Ports Act, 1908 but does not include MAJOR PORT

“port service” means any service rendered within a port or other port, in any manner;]

The ports are the main centres of trade. In India about 95% of the foreign trade by quantity and 70% by value takes place through the ports. [Mumbai Port](#) & [JNPT\(Navi Mumbai\)](#) handles 70% of maritime trade in India. There are 12 major ports: [Navi Mumbai](#), [Mumbai](#), [Kolkata](#) (including [Haldia](#)), [Paradip](#), [Vishakapatnam](#), [Ennore](#), [Chennai](#), [Tuticorin](#), [Kochi](#), [New Mangalore](#), [Mormugao](#) and [Kandla](#).

Other than these, there are 187 minor and intermediate ports, 43 of which handle cargo.

The distinction between major and minor ports is not based on the amount of cargo handled. The major ports are managed by port trusts which are regulated by the central government. They come under the purview of the Major Port Trusts Act, 1963. The minor ports are regulated by the respective state governments and many of these ports are private ports or captive ports.

(iii) EXEMPTIONS

(i) Airport Service/Port Services — Exemption to specified services provided within airport or port w.e.f. 1-7-2010 – [Notification No. 41/2010-S.T., dated 28-6-2010]

CG exempts the following services when provided wholly within the port or other port or airport namely :-

- (i) taxable service provided by a cargo handling agency in relation to, agricultural produce of goods intended to be stored in a cold storage;
- (ii) taxable service provided by storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;
- (iii) taxable service in relation to transport of export goods in an aircraft by an aircraft operator;
- (iv) taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

(ii) Airport service/Port services — Exemption to specified services provided within a port or an airport w.e.f. 1-7-2010– [Notification No. 31/2010-S.T., dated 22-6-2010]

CG exempts the following services when provided within a port or an airport : -

- (i) repair of ships or boats or vessels belonging to the Government of India including Navy or Coast Guard or Customs but does not include Government owned Public Sector Undertakings;
- (ii) repair of ships or boats or vessels where such process of repair amounts to 'manufacture' and has the meaning assigned to it in clause (f) of Section 2 of the Central Excise Act, 1944;
- (iii) supply of water;
- (iv) supply of electricity;
- (v) treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service);
- (vi) services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre;
- (vii) services provided by fire service agencies.
- (viii) pollution control services

from the whole of the service tax leviable thereon under section 66 of the Finance Act.

(iii) Effective rate of Service tax for specified services — Percentage of abatements

By finance Act 2010 any service rendered within port will be classified as port service. Hence the abatements which are individually applicable in respective service will also be allowed under port service.

		abatement
Renting of a Cab		60
Transport of goods by road in a goods carriage.		75
Erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment	This exemption is optional to the commissioning and installation agency. <i>Explanation.</i> - The gross amount charged from the customer shall include the value of the plant, machinery, equipment, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.	67
Commercial or industrial construction service.	This exemption shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure, <i>Explanation.</i> - The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service	67 /75 as the case may be
Construction of complex	This exemption shall not apply in cases where the taxable services provided are only completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act. <i>Explanation.</i> - The gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.	67 /75 as the case may be
Transport of goods by rail		70

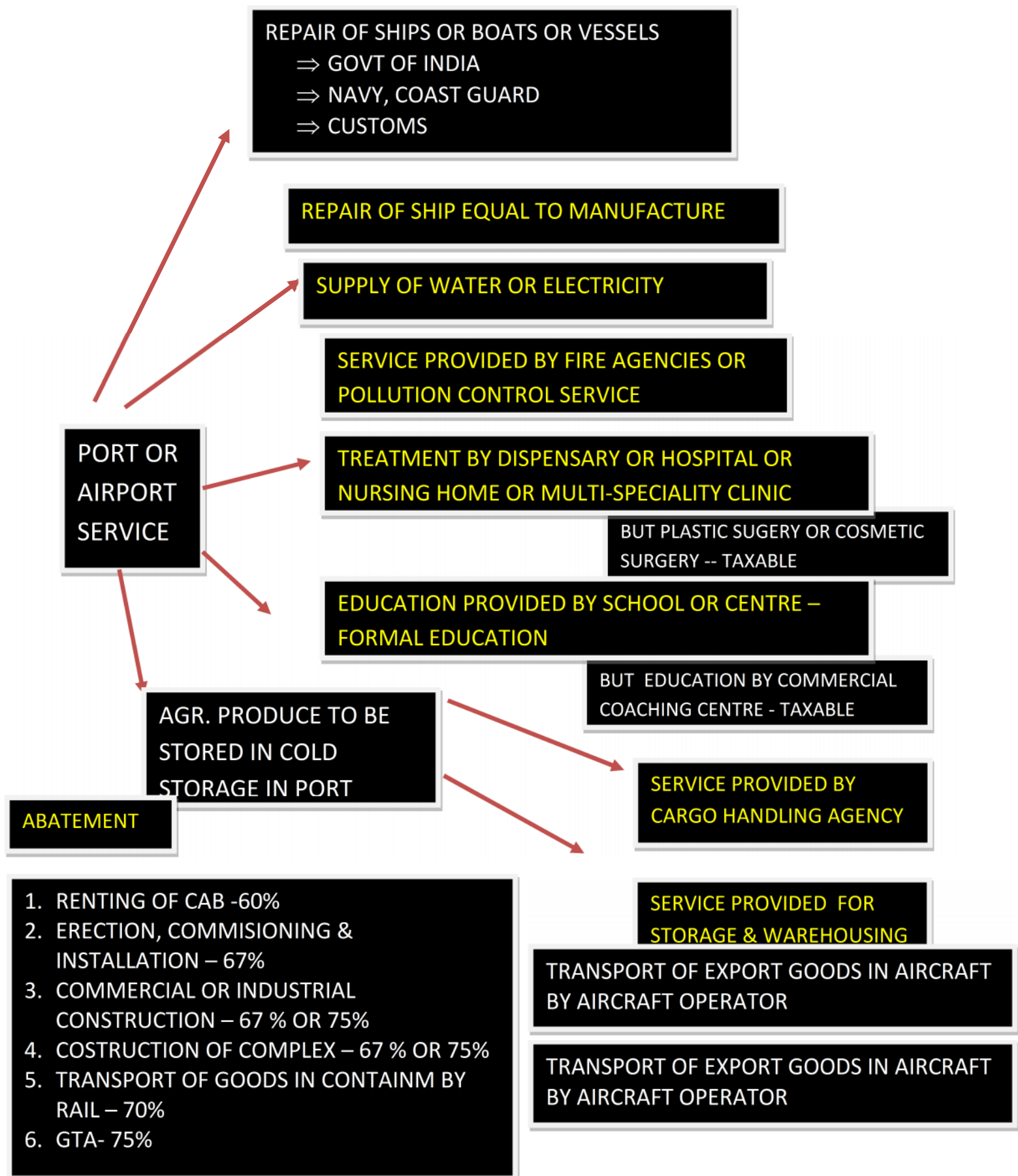
Provided that this notification shall not apply in cases where, -

- (i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the notification No. 12/2003- in respect of value of goods and materials sold by him to recipient of service.

(iv) CBEC CLARIFICATION

334/1/2010 The definitions of the taxable services, namely the 'Airport Services' [section 65 (105) (zzm)], the 'Port Services' [section 65 (105) (zn)] and the 'Other Port Services' [section 65 (105) (ztl)] are being amended to provide that,-

- (a) all services provided entirely within the airport/port premises would fall under these services; and
- (b) an authorization from the airport/port authority would not be a precondition for taxing these services.



(5) AIRPORT SERVICE

(i) Taxable service

Means any service provided or to be provided

to any person, by airports authority or by any other person, in any airport or a civil enclave :

Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the airport or civil enclave;]

“airport” has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994

“airports authority” means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 and also includes any person having the charge of management of an airport or a civil enclave;]

“civil enclave” has the meaning assigned to it in clause (i) of section 2 of the Airports Authority of India Act, 1994

CIVIL ENCLAVE means the area, if any allotted at an airport belonging to any armed force of the Union for use by persons availing of any air transport services from such airport or for the handling of baggage or cargo by such service, and includes land comprising of any building and structure on such area.

□□□□ □ □ □□□□□□

Calculate taxable value under port service

Particulars	Rs. In Lakh
Recovered port and dock charges	25
a) Berthing charges	5
b) Mooring charges	4
c) Port dues	8
d) Pilotage	3
e) Water supply charges	2
f) Salvage and diver charges	2
g) Anchorage charges	1
Recovered cargo handling charges	40
a) Wharfage for general cargo/ petroleum products	20
b) Carnage charges	5
c) Ore handling charges	2
d) Weighment charges for lorries and goods	3
e) Traffic appliance charges	10
Recovered warehousing and storage charges	70
Cargo handling charges for agriculture produce to be stored in cold storage	35
Warehousing charges for agriculture produce to be stored in cold storage	10
Container handling charges	15
Transshipment wharfage on containers	
Container storage charges	
Repair of ships of PSU in port	5
Repair of ships of Navy in port	6
Repair of ships of 'K Line ship' in port	3
Repair of ships of CUSTOM in port	2
Repair of ships of PSU amounting to manufacture in port	4
Pollution control services.	3
	218

Calculate Value of taxable service

ANS

Particulars	Rs. In Lakh
Recovered port and dock charges	23
a) Berthing charges	5
b) Mooring charges	4

c) Port dues	8	
d) Pilotage	3	
e) Water supply charges	— (W.N-1)	
f) Salvage and diver charges	2	
g) Anchorage charges	1	
Recovered cargo handling charges		40
a) Wharfage for general cargo/ petroleum products	20	
b) Carnage charges	5	
c) Ore handling charges	2	
d) Weighment charges for lorries and goods	3	
e) Traffic appliance charges	10	
Recovered warehousing and storage charges		70
Cargo handling charges for agriculture produce to be stored in cold storage (W.N-2)		----
Warehousing charges for agriculture produce to be stored in cold storage (W.N-2)		----
Container handling charges		15
Transshipment wharfage on containers		
Container storage charges		
Repair of ships of PSU in port (W.N-3)		5
Repair of ships of Navy in port (W.N-3)		-----
Repair of ships of 'K Line ship' in port		3
Repair of ships of CUSTOM in port (W.N-3)		----
Repair of ships of PSU amounting to manufacture in port (W.N-3)		---
Pollution control services. (W.N-3)		----
Value of taxable service		156

WORKING NOTES

- 1) As per NN 22/2010 supply of water is exempt
- 2) CG exempts the following services when provided wholly within the **port** or other port or airport namely :-
 taxable service provided by a cargo handling agency in relation to, agricultural produce of goods intended to be stored in a cold storage;
 taxable service provided by storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;
- 3) CG exempts the following services when provided within a **port** or an airport :-
 - (i) repair of ships or boats or vessels belonging to the Government of India including Navy or Coast Guard or Customs but does not include Government owned Public Sector Undertakings;
 - (ii) repair of ships or boats or vessels where such process of repair amounts to 'manufacture' and has the meaning assigned to it in clause (f) of Section 2 of the Central Excise Act, 1944;
 - (iii) pollution control services

Mooring charges □□□□ □□□□□□ □□ □□

Pilotage मागझन □□

Water supply charges □□□ □ □□□□ □□

Salvage and diver charges □□□□□□ □□□□ □□

Anchorage charges □□□ □□

Wharfage Wharfage refers to a fee ports impose on ships against the amount of cargo handled there

Traffic appliance charges □□□□□ □□□□□ □□

Que- whether service tax levied, if yes, then under which service when provided in port.

- 1) Fire fighting service agency providing service for fire fighting
- 2) Pollution control service provided
- 3) Amount charged for education provided by school at airport.
- 4) Amount charged for education provided by Commercial coaching centre at Airport.
- 5) Service provided by dispensary, hospital, nursing home.
- 6) Cosmetic or plastic surgery provided by hospital, multi- speciality clinic.
- 7) Supply of water or electricity
- 8) Repair of ship of Navy at port

ANS-

- (1) CG exempts the following services when provided within a port or an airport when services provided by fire service agencies
- (2) CG exempts the following services when provided within a port or an airport when pollution control services provided
- (3) CG exempts the following services when provided within a port or an airport when services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre;
- (4) Services provided by commercial coaching centre **not exempt** because CG exempts services when provided within a port or an airport provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre
- (5) TaxBLE, BECAUSE CG exempts services when provided within a port or an airport provided for treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (**except cosmetic or plastic surgery service**);
- (6) CG exempts services when provided within a port or an airport supply of water or supply of electricity;
- (7) CG exempts the following services when provided within a port or an airport for repair of ships or boats or vessels belonging to the Government of India including Navy or Coast Guard or Customs

Que- whether service tax levied, if yes, then under which service when provided in port. And determine value of taxable service

- 1) DLF has constructed canteen, Restaurant, public booth office at a cost of Rs. 20 Lakh
- 2) L & T erected, installed, telephone equipments, cold storage equipments and charged Rs 50 lakh.
- 3) M/s ABC charged from Aioport Rs. 30 lakh for renting a cab being operated in Airport.
- 4) M/s XYZ, a GTA bringing the goods from landing place to Port Gate by Road in its vehicles nd charging Rs. 25000.
- 5) M/s PQR, a Cargo handling agency providing loading, unloading, packing service within Port & charged Rs. 70000.

Ans

- (1) The construction of canteen, restaurant, public booth will not be classified under commercial construction service rather it will be classified in port service because after amendment by Finance Act 2010, when services entirely provided in port will be classified in port service. And abatement provided in commercial construction i.e 67% if cost of land not include or 75% when cost of land included will be given from Gross amount charged.
- (2) erected, installed, telephone equipments, cold storage equipments and charged Rs 50 lakh will not be classified under Erection, commissioning & installation service rather it will be classified in port service because after amendment by Finance Act 2010, when services entirely provided in port will be classified in port service. And abatement provided in Erection, commissioning & installation i.e 67% will be given.
- (3) Renting of cab will not be classified under Renting of cab service rather it will be classified under port service.
- (4) GTA service provided will not be classified under GTA service but classified under port service and abatement of 75% of value of taxable service will be given.
- (5) Cargo handling service provided within port will not be classified under cargo handling agency service rather it will be classified under port service.

(6) TOUR OPERATOR

(i) Taxable service

Means any service provided or to be provided to any person, by a tour operator in relation to a tour;

(ii) DEFINITIONS

- (a) **“tour operator”** means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder.

Explanation. —For the purposes of this clause, the expression “tour” does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field;]

- (b) **“tour”** means a journey from one place to another irrespective of the distance between such places;
 (c) **“tourist vehicle”** has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988

Tourist vehicle means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf.

(d) Contract carriage—sec 2(7) of Motor Vehicle Act

Means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum-

- (a) On a time basis, whether or not with reference to any route or distance or
 (b) From one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and include—
 (i) A maxi-cab and
 (ii) A Motor cab notwithstanding that separate fares are charged for its passengers.

(e) Stage carriage sec 2(40) of Motor Vehicle Act

means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

(iii) EXEMPTIONS

Tour Operator service — Exemption to **tour operator**s with contract carriage permit for specified services-- [Notification No. 20/2009-S.T., dated 7-7-2009]

CG exempts the taxable service provided or to be provided to any person, by a **tour operator** having a contract carriage or tourist vehicles with a permit” for inter-state or intrastate transportation of passengers, excluding tourism, conducted tours, charter or hire service, from whole of the service tax leviable thereon under section 66 of the said Finance Act.

(iv) Abatement

Tour operator service — Abatement percentage for package tour increased to 75% — Notification No. 1/2006-S.T. amended- [Notification No. 38/2007-S.T., dated 23-8-2007]

Following abatements prescribed

DESCRIPTION	CONDITIONS	% OF abatement
(i) Services provided or to be provided to any person, by a tour operator in relation to a package tour. <i>Explanation.</i> - The expression "package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour.	The bill issued for this purpose indicates that it is inclusive of charges for such a tour.	75
(ii) Services provided or to be provided to any person, by a tour operator in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour.	(a) The invoice, bill or challan issued indicates that it is towards charges for such accommodation, and (b) this exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.	90
(iii) Services, other than services specified in (i) and (ii) above, provided or to be provided to any person, by a tour operator in relation to a tour.	The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.	60"

Provided that this notification shall not apply in cases where, -

- the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- the service provider has availed the benefit under the notification No. 12/2003- in respect of value of goods and materials sold by him to recipient of service.

(v) CBEC CLARIFICATION**Trade notice 6/98**

Under Section 65(52) of the Finance Act, 1994 the definition of 'tour operator' has been revised to mean any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder. **With this change, 'non-permit holders' who operate as tour operators by using tourist vehicles**, which may have been leased or hired from persons who hold tourist permits are also now covered under the definition of a tour operator and liable to pay service tax.

B2/8/2004

Means part of Tour operator covers Packaged Tour. In case of a package tour (which are planned, scheduled, organized or arranged by tour operators), **the scope of the levy is being extended by removing the limitation regarding transportation by tourist vehicles only**. Such tourist operators would be subjected to service tax irrespective of the mode of transport used during such tours.

334/1/2008

- (a) Services provided in relation to a journey from one place to another in a tourist vehicle having contract carriage permit is leviable to service tax under tour operator service. Tour in a vehicle covered by the following categories of permits granted under the Motor Vehicles Act (MVA), 1988 and rules made thereunder are clearly leviable to service tax under tour operator service:
- (i) Contract Carriage permit granted under section 74 of the MVA, 1988 and authorisation certificate issued under Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993; and
 - (ii) Permit granted under section 88(9) in accordance with the provisions of section 74 of the MVA, 1988 in respect of tourist vehicles, for the purpose of promoting tourism.

Since the permits under the above two categories are granted only for tourist vehicle, service tax is leviable if the tour is provided in the above categories of vehicles.

- (b) Section 65(115) defining tour operator is being amended so as to include services provided in relation to a journey from one place to another, generally known as point-to-point tour, **in a vehicle having contract carriage permit**, even if the vehicle does not meet the criteria specified for tourist vehicles. With this amendment, journey from one place to another conducted in a vehicle having contract carriage permit shall be leviable to service tax under tour operator service. Service tax is not leviable under tour operator service only if the tour is conducted in a vehicle having stage carriage permit.
- (c) It may be noted that services provided in relation to a journey from one place to another conducted in a tourist vehicle having contract carriage permit for use by educational bodies shall be excluded from the scope of the taxable service. Educational bodies do not include commercial training or coaching centres.

Trade notice 1/2000

- (a) As per rule 82 of the Central Motor Vehicle Rules, 1989 a tourist permit is granted only for a 'tourist vehicle'. As per the Motor Vehicle Act, Section 2 (43) a tourist vehicle means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed. The term 'tour operators' covers any person who holds a tourist permit in respect of any vehicle. The service tax on tour operators is on

operators who run/operate a tour on motor vehicle provided that the tour operator holds a tourist permit under the Motor Vehicles Act, 1988 in respect of any motor vehicle. **Service Tax will be chargeable on all domestic and inbound tourist services provided by a tour operator holding a tourist permit.** Service Tax will also be chargeable on journeys/tours undertaken by tourist taxis and tourist buses or contract carriage other than stage carriage permit.

- (b) The tour operator can be all self-employed, single vehicle owner individual or a well organized firm providing a vast range of professional services in the field of tourism whether organized as a sole proprietorship, partnership, a private or a public limited company. Even public sector undertakings operating tours such as Indian Tourism Development Corporation, Delhi Tourism Development Corporation etc. are covered under this levy. However, State Roadways Corporations who fly the passengers in the neighbouring State will not be covered by the levy as they do not require a tourist permit but operate on the strength of agreements between the concerned state authorities.
- (c) The services rendered by the tour operator may be only for providing transport service within or outside, the town, city or State's territorial limits. The services rendered by the tour operators may only be limited to providing transport services in relation to a tour or it may also include a **host of other services** as in case of a package tour. The services provided by such a tour operator may also include, apart from providing the basic service of transportation from one place to another, services of providing **boarding and lodging arrangements, local sight seeing and guide services and a wide range of other value added services** provided by the tour operators such as **providing for porters, booking or arranging accommodation, reservation for entertainment/amusement parks, theatres and museums, providing health and baby sitting services etc.**

Tour Operator service — Exemption to Haj & Umrah pilgrimage under Export of Services Rules, 2005 clarified

Circular No. 117/11/2009-S.T., dated 30-10-2009

The amount charged to the pilgrims in India undertaking Haj and Umrah pilgrimage, is for services provided by the Government of Saudi Arabia and the tour takes place outside India. As per Rule 3(1)(ii) of the Export of Services Rules, 2005, (Circular No. 111/05/2009-S.T., dated 24-2-2009), the service in respect of **tour operator** is export if such service is performed outside India. It is also provided therein that where such taxable service is partly performed outside India, it shall be treated as performed outside India. Therefore, it is clarified that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Haj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the other conditions of export as provided in Export of Service Rules.

Exemptions :

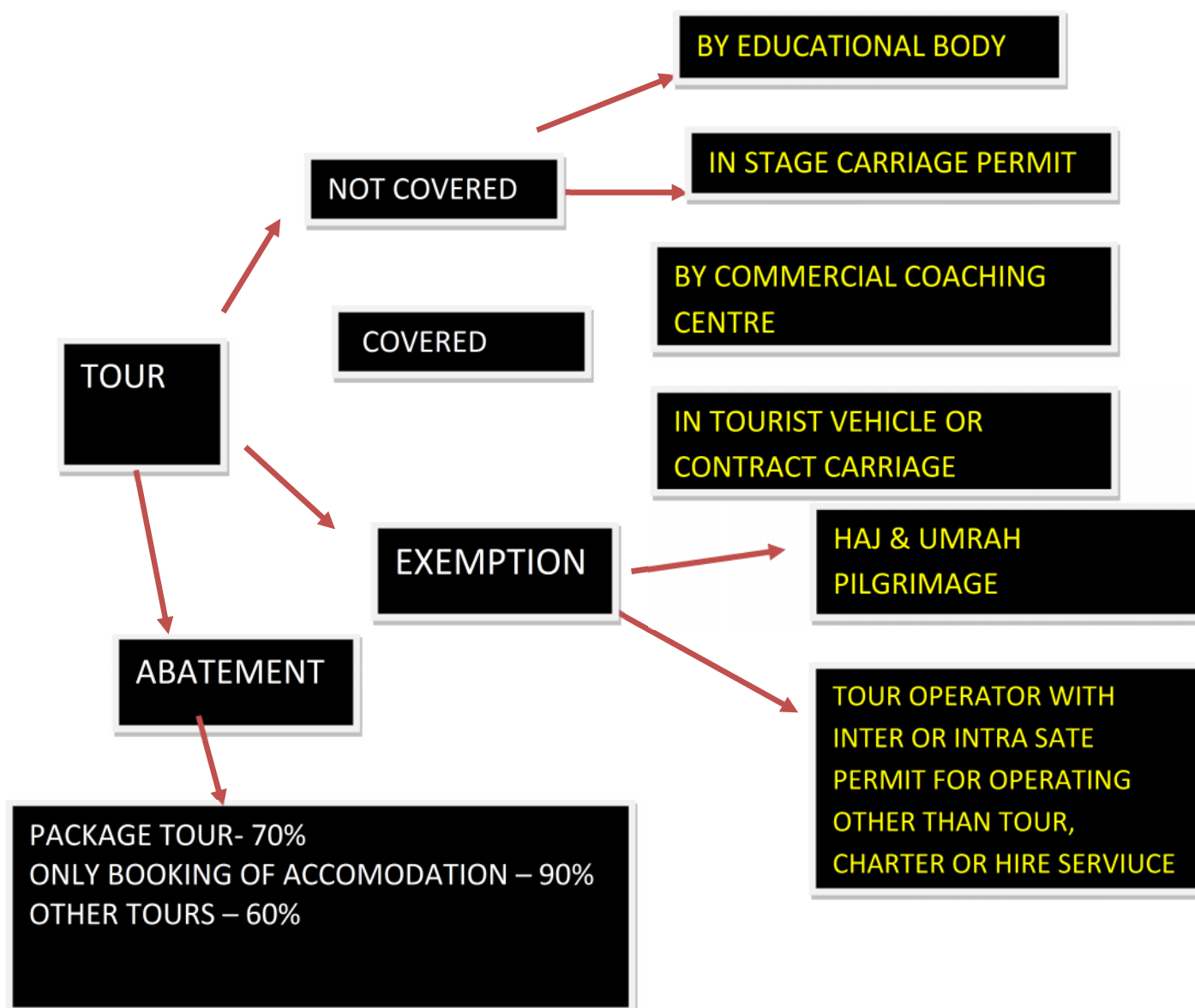
Private bus operators, who operate buses on specific inter-state or intra-state routes, are required to pay service tax as they ply their buses having 'contract carriage permits' and thus fall within the definition of tour operators. On the other hand the State Undertakings run buses, which run on the same route carrying passengers, are not subjected to service tax as these buses bear 'stage carriage permit'. In order to bring parity between the two, the services provided by the tour operators undertaking point-to-point transportation of passengers in a vehicle bearing contract carriage permit is being fully exempted from service tax, provided such transportation is not in relation to tourism or conducted tours, or charter or hire. (Notification No. 20/2009-S.T., dated 7-7-2009 refers).

Que- M/s ABC Tours & Travels arranged following Tours

- 1) Package Tour include Transportation, sight seeing, accommodation, food, tour guide etc. for which amount charged Rs. 200 lakh
- 2) Only service provided regarding booking of accommodation. For which amount charged Rs 30 lakh
- 3) Service provided regarding transportation and accommodation for which amount charged Rs. 80 lakh.
- 4) Amount charged by tour operator between delhi to Haryana other than for tour Rs. 25 lakh.

Calculate Value of taxable service**Ans**

Particulars	Amt in lakh
Package Tour [200 – 75% of 200]	50
service provided only booking of accommodation.[30 – 90% of 30]	3
Service provided regarding transportation and accommodation [80 – 60% of 80]	32
tour operator between delhi to Haryana other than for tour exempt	-----
Value of taxable service	85



(7) HEALTH CHECK-UP SERVICE

(i) Taxable service

Means any service provided or to be provided by any hospital, nursing home or multi-speciality clinic,—

- (i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or
- (ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic;

“business entity” includes an association of persons, body of individuals, company or firm but does not include an individual;]

(ii) CBEC CLARIFICATION

334/1/2010 Health services undertaken by hospitals or medical establishments for the employees of business organizations and health services provided under health insurance schemes offered by insurance companies.

- (1) With the change in the style of functioning of the business organizations, health check up is a routine facility provided by the employers to their employees. The main purpose is to ensure that the productivity of the organization is not adversely affected due to ill health of its employees. Such activities, commonly known as corporate health check up schemes, are undertaken by designated hospitals in order to detect any medical indicator or to ensure timely diagnosis of any disease so that prophylactic measures can be taken. In such cases, the hospital providing these services charge the employer i.e. the business organization and it constitutes expenditure for the latter. In certain cases (for example, in case of flight crew) pre-flight check ups are conducted not only to test the fitness levels but also to rule out the possibility of the flying crew being under intoxication. Such health check up schemes are being brought within the ambit of service tax under the new service.
- (2) A large number of health insurance schemes are being offered by the insurance companies under which charges for hospitalization, surgery, post-surgical nursing etc. are generally paid by the insurance company. Such insurance policies, which fall under the category of general insurance service, are already taxable. Under general insurance service, an insurance company is a service provider to its clients. Under the proposed new service, tax is also being imposed on the medical charges paid by the insurance companies to the hospitals on behalf of a business entity for its employees. As such, the insurance company would be the service receiver and the tax paid by the hospital would be available to the insurance companies as credit.
- (3) The tax on the above mentioned health services would be payable only if and to the extent the *payment for such medical check up or treatment etc. is made directly by the business entity or the insurance company to the hospital or medical establishment*. Any additional amount paid by the individual (i.e. the employee or the insured, as the case may be) to the hospital would not be subjected to service tax. This is to ensure that an individual is not required to pay a tax for which he cannot take credit.

Que – Tata Hospital provided following service

Particulars	Amt in lakh
Health check/ Preventive check of employees of companies for which payment made by companies	25
Health treatment of employees of companies for which payment made by companies	75
Health check/ Preventive check of employees of companies for which payment made directly by individuals to Hospital	30
Health treatment of employees of companies for which payment made by individuals directly to hospital	45
Health check of employees of Proprietorship firm for which payment made by proprietorship firm	25
Health check of employees of Proprietorship firm for which payment made by employees directly.	10
Health check up of individuals insured under cash-less insurance schemes, where payment made directly by insurance company	20
Preventive check up of individuals insured under cash-less insurance schemes, where payment made directly by insurance company	70
Health check up of individuals insured under health insurance schemes, where payment made directly by individuals which is later on reimbursed by insurance company to individuals	15
	315

Calculate Value of taxable service

Ans

Particulars	Amt in lakh
Health check/ Preventive check of employees of companies for which payment made by companies	25
Health treatment of employees of companies for which payment made by companies [w.n-1]	----
Health check/ Preventive check of employees of companies for which payment made directly by individuals to Hospital [w.n-2]	----
Health treatment of employees of companies for which payment made by individuals directly to hospital [w.n-3]	----
Health check of employees of Proprietorship firm for which payment made by proprietorship firm [w.n-4]	----
Health check of employees of Proprietorship firm for which payment made by employees directly. [w.n-4]	----
Health check up of individuals insured under cash-less insurance schemes, where payment made directly by insurance company	20
Preventive check up of individuals insured under cash-less insurance schemes, where payment made directly by insurance company [w.n-5]	----
Health check up of individuals insured under health insurance schemes, where payment made directly by individuals which is later on reimbursed by insurance company to individuals [w.n-6]	----
Value of taxable service	45

Working notes

- 1) **Health** treatment is not covered
- 2) Since no direct payment made by business entity, hence it is not taxable.
- 3) Since the payment made by employees directly and the payment is for health treatment. Hence not taxable.
- 4) Since the employee is not of business entity, hence not taxable.
- 5) Preventive check for which payment made by insurance company is not covered, hence not taxable.
- 6) Since payment not made by insurance company directly, hence it is not taxable.

(8) BRAND PROMOTION SERVICE

(i) Taxable service

Means any service provided or to be provided

to any person, by any other person, through a business entity or otherwise, under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event.

Explanation. — For the purposes of this sub-clause, “brand” includes symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or business entity;

“business entity” includes an association of persons, body of individuals, company or firm but does not include an individual;]

(ii) CBEC CLARIFICATION

334/1/2010 Promoting a ‘brand’ of goods, services, events, business entity etc.

- (1) Commercial advertisement has taken different shapes and forms. Apart from the advertisements in print and visual media and sponsorship, one of the recent trends is to advertise a brand (i.e. of goods, services, events, business houses bearing a particular brand name or house name) usually by using a celebrity (such as sportsperson, film stars, etc.) to associate him/her with the brand. The intended impression that is created in the minds of customers or users is that the products and services of that brand have the level of excellence comparable to that of the celebrity. Unlike in case of advertisements using models, a brand ambassador works under a contract of a reasonably long period, where under he is not only required to advertise the goods or service in different media but also to attend promotional, product launching events, make appearances in public activities related to the brand or the brand holder or use such goods or services in public. The contractual amounts are substantial and it may not only involve an individual celebrity but a group of celebrities such as a cricket team or the actors of a successful film.
- (2) It is important to note that promotion or marketing of sale of goods produced, provided or belonging to a client and promotion or marketing of services provided by the client are already covered under Business Auxiliary Services (BAS). Such activities would continue to remain classified under BAS. The difference between the services classifiable under BAS and the newly proposed service is that the latter has a wider coverage in the sense that mere promotion of a brand would attract tax under this service even if such promotions cannot be directly linked to promotion of a particular product or service. Many companies/corporate houses (for example Sahara, ITC or Tatas) are associated with a range of activities including production/marketing/sale of goods, provision of services, holding of events, undertaking social activities etc. If the brand name/house mark etc. is promoted by a celebrity without reference to any specific product or services etc., it is difficult to classify it under BAS. Such activities, like mere establishing goodwill or adding value to a brand would fall under this newly introduced service.

Que- M/s Sahara India/ DLF signed an agreement with BCCI for Promotion of Brand of Sahara/ DLF without directly reference to any individual product. For Rs. 100 crore.

Ans- taxable under brand promotion and not under business auxiliary service.

(9) ERECTION, COMMISSIONING OR INSTALLATION SERVICE

(i) Taxable service

Means any service provided or to be provided to any person], by a [erection, commissioning and installation] agency in relation to commissioning or installation;

(ii) DEFINITION

“**erection, commissioning or installation**” means any service provided by a commissioning and installation agency, in relation to, —

- (i) erection, commissioning or installation of plant, [machinery, equipment or structures, whether pre-fabricated or otherwise]; or
- (ii) installation of —
 - (a) electrical and electronic devices, including wirings or fittings therefor; or
 - (b) plumbing, drain laying or other installations for transport of fluids; or
 - (c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or
 - (d) thermal insulation, sound insulation, fire proofing or water proofing; or
 - (e) lift and escalator, fire escape staircases or travelators; or
 - (f) such other similar services;]

commissioning and installation agency” means any agency providing service [in relation to erection, commissioning or installation;]

(iii) EXEMPTION

Erection, Commissioning or Installation service — Exemption to specified food grain handling system, cold storage and agricultural processing units- *[Notification No. 12/2010-S.T., dated 27-2-2010]*

CG exempts the taxable service in relation to the following from the whole of the service tax, namely :-

- (i) **erection, commissioning** or installation of mechanised food grain handling systems;
- (ii) **erection, commissioning** or installation of equipment for setting up or substantial expansion of cold storage;
- (iii) installation and commissioning of machinery or equipment for initial setting up or substantial expansion of units for processing agricultural, apiary, horticultural, dairy, poultry, aquatic and marine products and meat.

Agriculture/Horticulture/Agri-processing Sectors:

IN Budget 2010 to promote agri-processing units which would provide a significant value addition to the agri/horticulture produce from the farming community. GOVT HAVE GIVEN EXEMPTION IN EXCISE, CUSTOM AND SERVICE TAX.

To meet these objectives, the Central Government has **granted project import status to the initial** setting up or substantial expansion of a cold storage, cold room (including farm pre-coolers) for preservation or storage or an industrial unit for processing of agricultural, apiary, horticultural, dairy, poultry, aquatic & marine produce and meat. These projects would attract a concessional rate of basic customs duty of 5%.

Similarly, project import status is granted to installation of mechanized handling systems & pallet racking systems, in mandis or warehouses for food grains and sugar, with a concessional rate of basic customs duty of 5%. Moreover, such systems are also exempted from additional duty of customs (CVD) and special additional duty of customs.

NOTE- SERVICE TAX EXEMPTION HAS ALSO BEEN GRANTED ON INSTALLATION OF FOOD GRAIN HANDLING SYSTEM / COLD STORAGE OR MACHINERY OR EQUIPMENT FOR AGRI- PROCESSING SECTORS

(iv) ABATEMENT- 1/2006

Erection, commissioning or installation, under a contract for supplying a plant, machinery, equipment or structure and erection, commissioning or installation of such plant, machinery , equipment Or structure	This exemption is optional to the commissioning and installation agency. <i>Explanation.</i> - The gross amount charged from the customer shall include the value of the plant, machinery, equipment, structure, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.	67
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Provided that this notification shall not apply in cases where, -

- (i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the notification No. 12/2003- in respect of value of goods and materials sold by him to recipient of service.

Note- if services of erection, commissioning and installation are rendered wholly within port or other port or airport then this abatement shall continue to be available even though these are classified under port or other port or airport service respectively.

(v) CBEC CLARIFICATION

Erection would refer to the civil works to installation/commissioning of a plant or machinery. In this year's budget, the scope of service tax under installation and commissioning is being extended to include erection also. Erection involves civil works, which would otherwise fall under the category of construction services. However, in case of a composite contract for erection, commissioning and installation, the erection charges would be taxed as part of this category of service.

B 1/6/2005 –Erection, commissioning or installation services

Erection, commissioning or installation of plant, machinery or equipment is already covered under service tax. The scope of this taxable service has been expanded by including specified installation services such as installation of electrical and electronic devices including their wirings and fittings, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work, and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases and travelators [refer clause (39a) of section 65].

Cable laying under or alongside roads — Service tax liability- Circular No. 123/5/2010-TRU, dated 24-5-2010**2.Scope of certain taxable services in brief;**

'Commercial or industrial construction services', in brief,

- (i) cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that arc parts

of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.

Under ‘

- (ii) Erection, commissioning or installation services', the activities relevant to the instant issue are
- (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and
 - (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.

3. The taxable status of various activities, on which disputes have arisen

Based on the foregoing, the following would be the tax status of some of the activities in respect which disputes have arisen,

S. No.	Activity	Status
1.	Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.
2.	Laying of cables under or alongside roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
3.	Laying of electric cables between grids/sub-stations/ transformer stations en route	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.
4.	Installation of transformer/ substations undertaken independently	Taxable service, namely Erection, commissioning or installation services [section 65(105)(zzd)].
5.	Laying of electric cables up to distribution point of residential or commercial localities/ complexes	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service, namely commercial or industrial construction' or 'construction of complex' service [section 65(105)(zzq)/(zzzh)], as the case may be.
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service, namely Erection, commissioning or installation services [section 65(105)(zzd)].
8.	Railway electrification, electrification along the railway track	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994

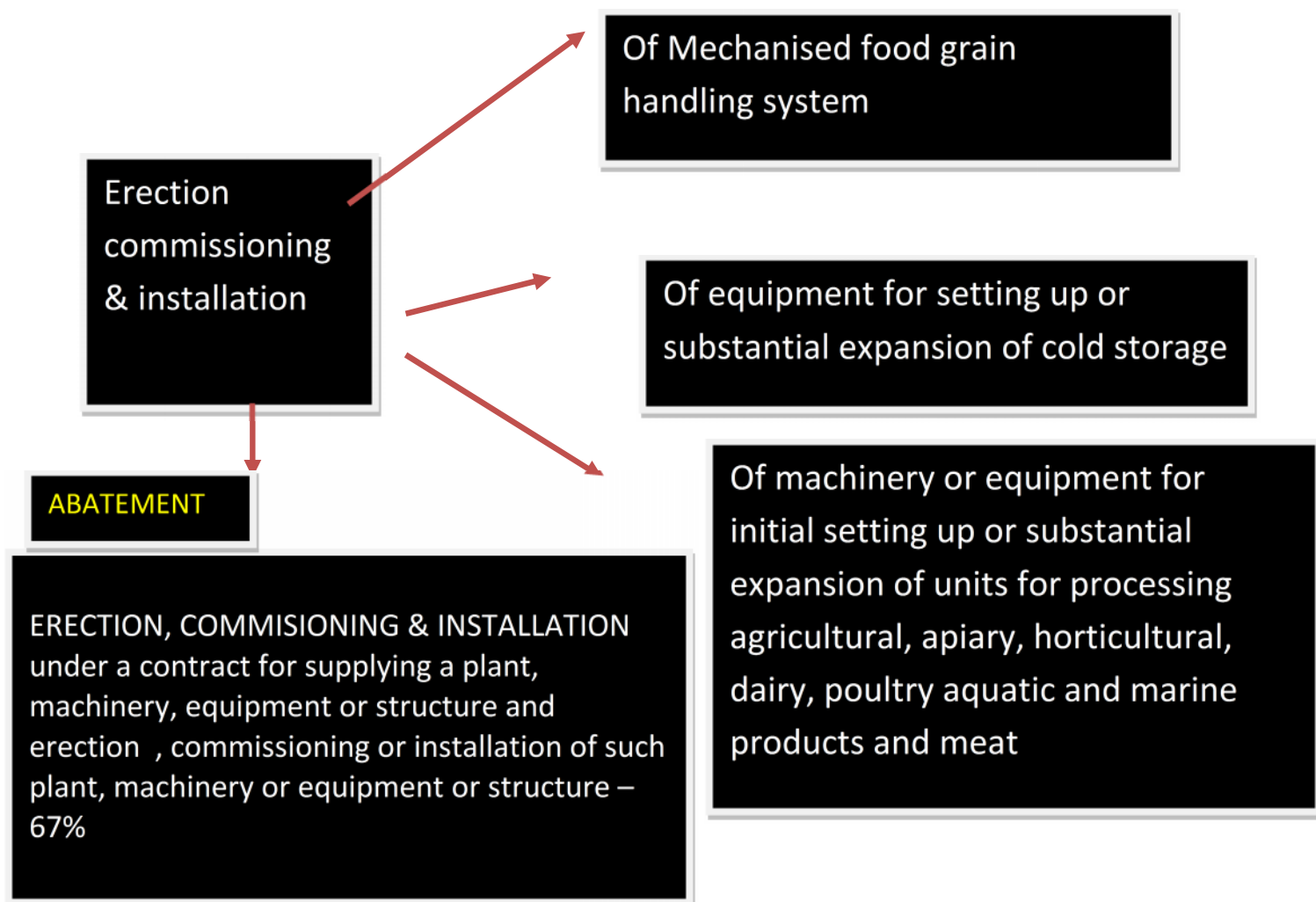
Que - M/s L & T providing Erection, commissioning and installation service

particulars	Amt in lakh
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh liable to VAT in State	
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh not liable to VAT in State	
Lift, escalator and fire escape staircase installed at site of Delhi Metro site for which amount charged . material is supplied by Delhi Metro	15
Erection, commissioning , installation of Mechanised Food grains Handling system for Basmati. It includes the value of material Rs 40 lakh liable to vat	75
Erection, commissioning , installation of cold storage plant for Basmati. It includes the value of material Rs 40 lakh not liable to vat	75
Pumping, drain laying or other installation for transportation of fluid for Gail. Material supplied by GAIL.	45
Heating, ventilation , AC installed in a shopping Mall. Material value included is 10 lakh not liable to VAT.	25
Erection, commission and installation of Thermal insulation, Sound insulation installed in port	10
	245

Calculate **Value of taxable service****Ans**

particulars	Amt in lakh
Erection, commissioning & installation	
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh liable to VAT in State	-----
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh not liable to VAT in State	15
Lift, escalator and fire escape staircase installed at site of Delhi Metro site for which amount charged . material is supplied by Delhi Metro	15
Erection, commissioning , installation of Mechanised Food grains Handling system for Basmati. It includes the value of material Rs 40 lakh not liable to vat	-----
Erection, commissioning , installation of cold storage plant for Basmati. It includes the value of material Rs 40 lakh not liable to vat	-----
Pumping, drain laying or other installation for transportation of fluid for Gail. Material supplied by GAIL.	45
Heating, ventilation , AC installed in a shopping Mall. Material value included is 10 lakh not liable to VAT.	25
Erection, commission and installation of Thermal insulation, Sound insulation installed in port	-----
	100
Works contract service	
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh liable to VAT in State	15
Port service	
Erection, commission and installation of Thermal insulation, Sound insulation installed in port	10
Value of taxable service	125

Note- if transfer of property in goods involved then it will be classified as works contract service. If service is rendered in port, then from amendment made by budget 2010, it will be classified in Port service.



(10) RENTING OF IMMOVABLE PROPERTY

(i) Taxable service

Means any service provided or to be provided to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce.]

Explanation 1 — For the purposes of this sub-clause, “immovable property” includes —

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,
- (v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;]

but does not include —

- (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
- (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purposes; and
- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2 — For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

(ii) DEFINITION

“renting of immovable property” includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation [1]. — For the purposes of this clause, “for use in the course or furtherance of business or commerce” includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;]

Explanation 2. — For the removal of doubts, it is hereby declared that for the purposes of this clause “renting of immovable property” includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property;]

(iii) Renting of **Immovable Property** Service — Abatement of Property Tax levied and collected by local bodies— [Notification No. 24/2007-S.T., dated 22-5-2007]

CG exempts the taxable service of renting of **immovable property**, from so much of the service tax leviable thereon as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such **immovable property** less taxes on such property, namely property tax levied and collected by local bodies :

Provided that any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged :

Provided further that wherever the period for which property tax paid is different from the period for which service tax is paid, property tax proportionate to the period for which service tax is paid shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the **immovable property** for the said period, for the purposes of levy of service tax.

Example :

Property tax paid for April to September = Rs. 12,000/-

Rent received for April = Rs. 1,00,000/-

Service tax payable for April = Rs. 98,000/- $(1,00,000 - 2,000) \times$
applicable rate of service tax

This notification shall come into force on the 1st day of 2. June, 2007.

(iv) Service Tax Rules, 1994—Fourth Amendment of 2007

RULE 6(4C). Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services provided or to be provided in relation to renting of immovable property, has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment.”.

(v) CBEC CLARIFICATION

334/1/2008

Renting of immovable property service : Renting of immovable property for use in the course or furtherance of business or commerce [section 65(105)(zzzz)] is the taxable service. Renting includes letting, leasing, licensing or other similar arrangement. The contract is for right-to-use an immovable property for a consideration. Immovable properties excluded from the scope of this service are :

- ⇒ residential properties
- ⇒ residential accommodation such as hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities
- ⇒ vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes
- ⇒ vacant land, whether or not having facilities clearly incidental to the use of such vacant land
- ⇒ land used for educational, sports, circus, entertainment and parking purposes

Similarly, renting of immovable property in the following cases is also excluded from the scope of this taxable service, namely :-

- (i) renting of immovable property by a religious body
- (ii) renting of immovable property to a religious body,
- (iii) renting of immovable property to an educational body, other than commercial training or coaching centre

Commercial coaching or training centre is defined under section 65(27).

Where renting of immovable property is a single composite contract involving part of property for use in commerce or business and part of it for residential/accommodation purposes, for the purpose of levy of service tax under this sub-clause, entire property under the contract is treated as property for use in commerce or business and accordingly the total value of the contract shall be the taxable value.

Renting of immovable property and Works contract services — Clarifications thereto and amendment to Circular No. 96/7/2007-S.T., dated 23-8-2007

Circular No. 98/1/2008-S.T., dated 4-1-2008

Issue (2)	Clarification (3)
Commercial or industrial construction service [section 65(105)(zzq)] or works contract service [section 65(105)(zzza)] is used for construction of an immovable property. Renting of an immovable property is leviable to service tax [section 65(105)(zzzz)]. Whether or not, commercial or industrial construction service or works contract service used for construction of an immovable property, could be treated as input service for the output service namely renting of immovable property service under the Cenvat Credit Rules, 2004?	Right to use immovable property is leviable to service tax under renting of immovable property service. Commercial or industrial construction service or works contract service is an input service for the output namely immovable property. Immovable property is neither subjected to central excise duty nor to service tax. Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' or 'goods' as referred to above, input credit cannot be taken.

(ii) after Reference Code 097.01/23-8-07, the following Reference Codes and corresponding issues and clarifications shall be inserted, namely :-

Services provided in relation to execution of a works contract is leviable to service tax [section 65(105)(zzza)]. VAT/sales tax is payable on the transfer of property in goods involved in the execution of a works contract. Service tax is leviable on the value equivalent to the gross amount charged for the works contract less value of the transfer of property in goods involved in the execution of the works contract which is leviable to VAT/sales tax [Rule 2A of the Service Tax (Determination of Value) Rules, 2006]. Whether or not, excise duty paid on goods, subjected to levy of VAT/sales tax under works contract service, can be taken as credit under the Cenvat Credit Rules, 2004?	Value for the purposes of levy of service tax under works contract service does not include the value pertaining to transfer of property in goods involved in the execution of a works contract leviable to VAT/sales tax. Works contract service provider is, therefore, not eligible to take credit of excise duty paid on such goods involved in the execution of works contract.
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334/1/2008 Renting of immovable property service :

- (1) Use of immovable property is allowed for placing vending / dispensing machines in malls and other commercial premises and erection of communication towers on buildings. In such cases, there may or may not be transfer of right of possession or control of the immovable property in favour of the person using such property.
- (2) It is proposed to clarify by way of removal of doubts that renting of immovable property service includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the immovable property. Field formations may ensure that service tax is collected in all such cases.

109/3/2009—Subject : Service tax on movie theatres - Regarding.

Normally a producer of a movie sells the rights of showing the movies in a region to a distributor. The distributor in turn enters into agreement with theatre owners. This agreement can be that the distributor leases out the hall for screening of the movie. Here, the theatre owner gets a fixed rent from the distributor. The profit or loss from exhibiting the film is borne by the distributor. In such a case, the theatre owner provides the taxable service of 'Renting of immovable property for furtherance of business or commerce' and is accordingly liable to pay service tax.

334/1/2010

Amendments are being made in the definition of the taxable service 'Renting of immovable property' [section 65 (105) (zzzz)] to,-

- (i) provide explicitly that the activity of 'renting' itself is a taxable service. *This change is being given retrospective effect from 1-6-2007;* and
- (ii) provide that renting of vacant land, where the agreement or contract between the lessor and lessee provides for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease, shall be subjected to service tax.

Export of Service Rules, 2005 have been amended as follows :

- The taxable service, namely 'Mandap Keeper Service' has been shifted from the list under rule 3(1) (ii) [i.e. performance related services] to the list under rule 3(1)(i) [immovable property related services] and three taxable services, namely 'Chartered Accountant Services', 'Cost Accountant Services' and 'Company Secretary's Services', have been shifted from the list under rule 3(1) (ii) [i.e. performance related services] to the list under rule 3(1)(iii) [residual category of services]. Notification No. 6/2010-ST, dated 27th February 2010 refers. Identical changes have been made under the Taxation of services (Provided from Outside India and Received in India) Rules, 2006 as well [Notification No. 16/2010-ST, dated 27th February 2010 refers];
- The condition prescribed under rule (2) (a) i.e. 'such service is provided from India and used outside India' has been deleted [Notification No. 6/2010-ST, dated 27th February 2010 refers].

Renting of Immovable Property service

9.1 This service was introduced in 2007 with a view to tax the commercial use of immovable property hired on rent. The tax on rent paid is available as input credit if the commercial activity involves provision of taxable service or manufacture of dutiable goods. However, the Hon'ble High court of Delhi in its order dated 18-4-2009 in the case of *Home Solutions Retail India Ltd. & Others v. UOI* has struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce does not involve any value addition and therefore, cannot be regarded as service. Apart from the revenue loss caused to the exchequer, the judgment has placed the landlords in a very precarious situation. In view of this judgment, the commercial tenants have stopped them reimbursing the tax element. However, the landlords are receiving regular demand notices from the department issued to protect government's revenue for the interim period.

9.2 In order to clarify the legislative intent and also bring in certainty in tax liability the relevant definition of taxable service is being amended to clarify that the activity of renting of immovable property *per se* would also constitute a taxable service under the relevant clause. This amendment is being given retrospective effect from 1-6-2007.

10. Renting of vacant land

10.1 Under the definition of taxable service pertaining to renting of immovable property, the renting of vacant land used for agriculture, farming, forestry, animal husbandry, mining, education, sports, circus, entertainment and parking purposes, is excluded from the purview of service tax. Further, '*vacant land*', *whether or not having facilities clearly incidental to the use of such vacant land* has also been excluded from the tax net.

10.2 It has been reported that in many states, the local industrial corporations or PSUs or even private organizations rent vacant land on a long term leases with an explicit understanding that lessee would construct factory or commercial building on that land. In such cases the ownership of the land is not transferred to the lessee and thus it is a service provided by the lessor to the lessee. The situation is similar to renting out a constructed structure for commercial purposes except that at the time of executing the lease agreement the land is in a vacant state and that later the lessee constructs commercial structure thereon after executing the lease deed. Such lease agreements escape service tax because of the exclusion mentioned above.

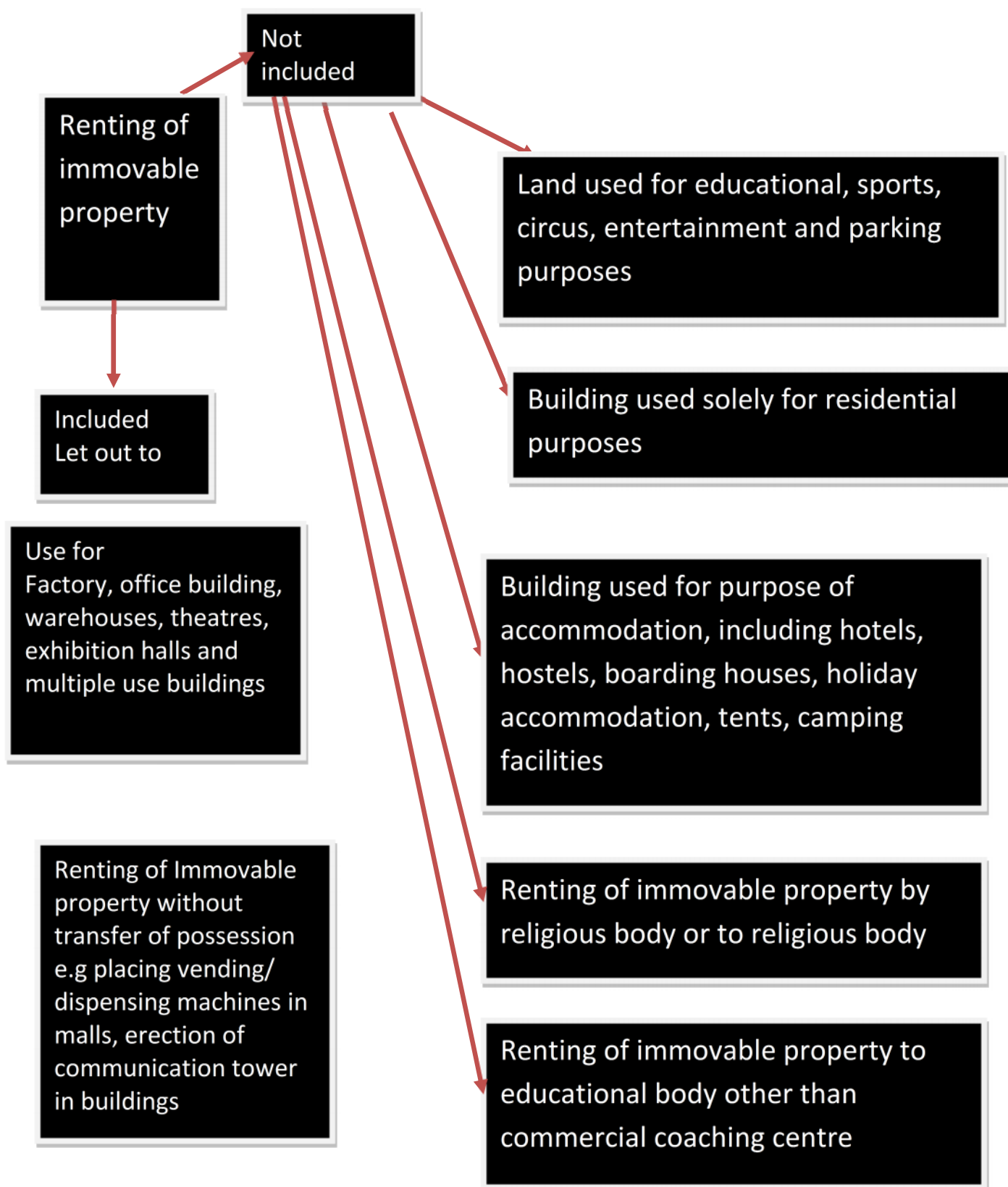
10.3 Suitable amendment in the definition of taxable service relating to renting to immovable property is being made so as to provide that tax would be charged on rent of a vacant land if there is an agreement or contract between the lessor and lessee that a construction on such land is to be undertaken for furtherance of business or commerce during the tenure of the lease.

M/s ABC has recd Rs 300 lakh on account of renting of Property. It includes the following

Particulars	Amt in lakh
Land let out for parking Purpose	5
Land let out for Agriculture	10
Land let out to IPL for Sports	12
Land given on lease to Tata where Building will be constructed	15
Land given on lease to School where Building will be constructed	13
Building given to temple on rent	25
Building given to University on rent	12
Building given to Bright Institute (Commercial coaching centre) on rent	35
Building given to Hotels	45
Airtel telephone tower was installed in the premises of M/s ABC for which rent charged without transfer of possession.	20

Calculate Value of taxable service

Particulars		Amt in lakh
Total amount received		300
Less		
Land let out for parking Purpose	5	
Land let out for Agriculture	10	
Land let out to IPL for Sports	12	
Land given on lease to Tata where Building will be constructed	----	
Land given on lease to School where Building will be constructed	13	
Building given to temple on rent	25	
Building given to University on rent	12	
Building given to Bright Institute (Commercial coaching centre) on rent	----	
Building given to Hotels	----	
Airtel telephone tower was installed in the premises of M/s ABC for which rent charged without transfer of possession.	----	77
Taxable value of service		223



Renting (leasing) of vacant land by PSU or Local industrial corporation etc. That lessee will construct factory or commercial building on that land. Renting will be liable to service tax.

Immovable property partly used for business and partly used for residential shall be deemed to be immovable property for use in course of business or commerce.

Forestry is the science, art and practice of understanding, managing and using wisely the natural resources associated with, and derived from forest lands.

These resources include timber, water, fish, wildlife, soil, plants, and recreation. Forest lands are instrumental in the beauty and spiritual impact of our landscape. The utilization of all of these resources is part of the cultural heritage of British Columbia, and modern resources management embraces these values. Finding a balance between these multiple uses, while sustaining and conserving forest resources is the basis of this challenging and exciting program of study.

Not
covered

AGRICULTURE , FARMING



Renting of
LAND FOR

AQUACULTURE



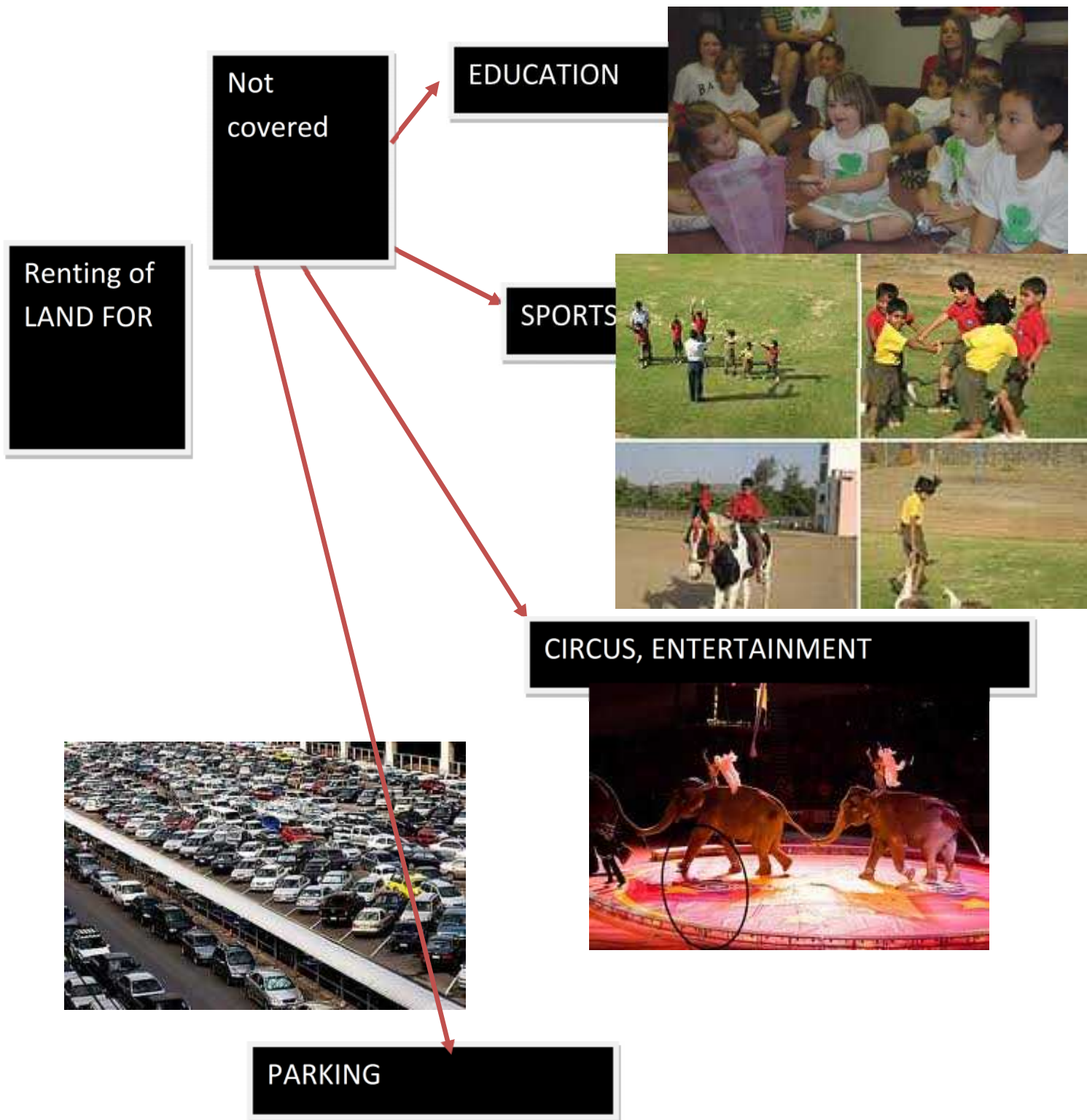
MINING

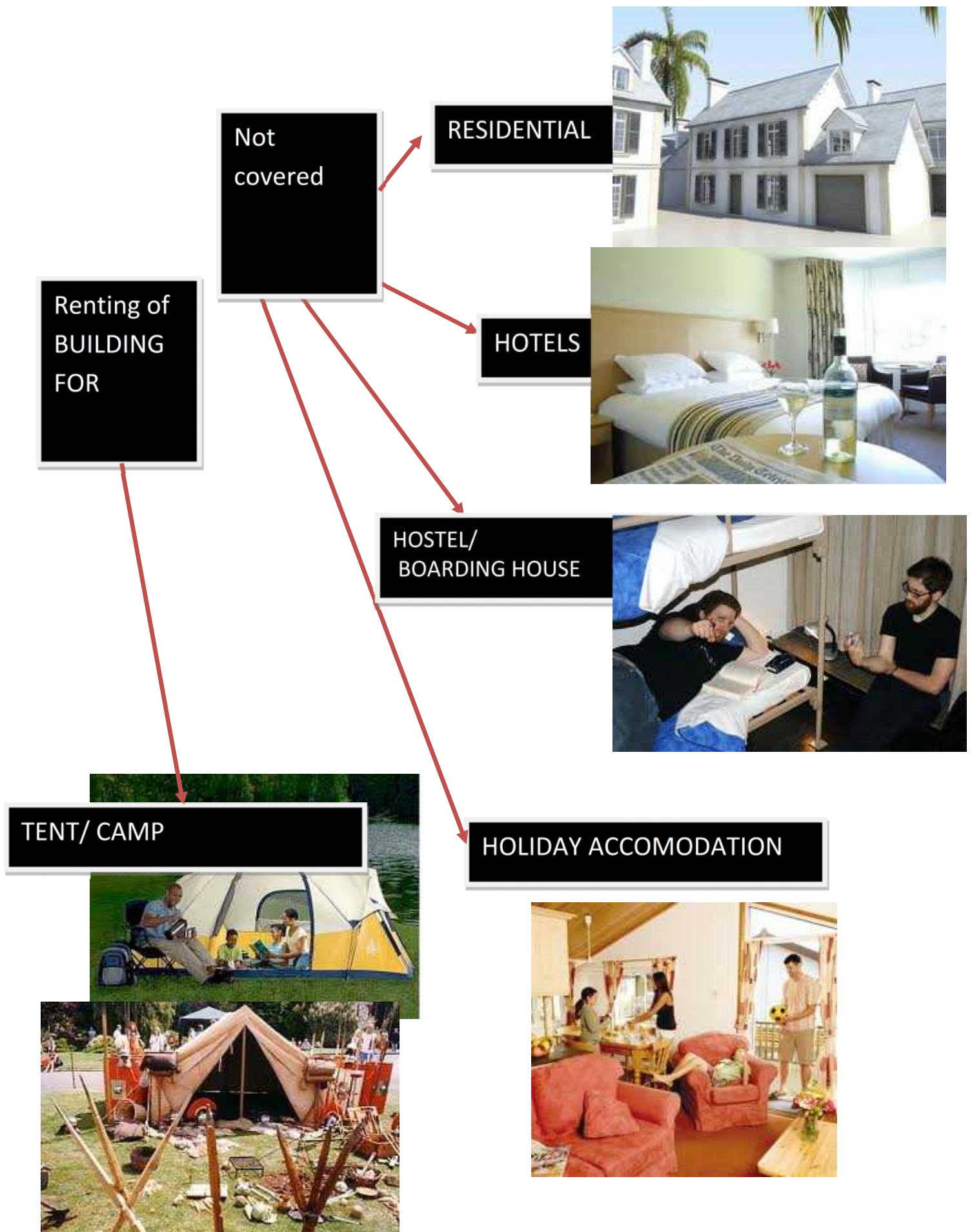
FARMING



ANIMAL HUBANDRY







(11) ADVERTISING SERVICE

(i) Taxable service

Means any service provided or to be provided to any person], by an advertising agency in relation to advertisement, in any manner;

“advertisement” includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;

“advertising agency” means any [person] engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

Persons/agencies canvass advertisements for publishing, on commission basis. Such persons/ agencies do not provide any other services like making, preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for public-shing on a commission basis by persons/agencies is classifiable as Advertising Agency service [section 65(105)(e)] or not?	Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105)(e). Such services are liable to service tax under business auxiliary service [section 65(105)(zzb)].
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Free Commercial Time to advertising agencies, not leviable

[Circular No. 78/08/2004-S.T., dated 23-3-2004](#)

the television serial producers, who either

- (i) sell TV serial episodes to the TV channels, or
- (ii) allow such episodes to be telecasted by the channels in lieu of procurement of Free Commercial Time (FCT), which is sold by them to advertising agencies for showing [advertisements](#).

Similarly, in case of FCT, selling the time allotted to a producer does not fall within the purview of “[advertisement](#) service” since this activity is not connected to making, preparation, display or exhibition of [advertisement](#). This is akin to providing space in a newspaper or magazine for publishing an [advertisement](#) and has nothing to do with actual presentation of the [advertisement](#).

Note- however presently new service sale of space or time for advertisement introduced.

Service Tax — Compilation, printing and publishing of Telephone Directories, yellow pages and business directories covered under the definition of ‘advertising agency’ and liability to pay Service Tax

[Trade Notice No. 99 dated 16-9-1999 of the Calcutta Commissionerate](#)

in the case of persons, who are printing and publishing telephone directories, Yellow pages or business directories, their activity is essentially of printing a readymade advertisements from the advertisers and publishing the same in the directory. Their activities are similar to those carried out by newspapers or periodicals. As such, this activity shall not attract service tax. However, if these persons also undertake any activity relating to making or preparation of an advertisement, such as designing, visualising, conceptualising etc., then they will be liable to pay service tax on the charges made thereon.

334/4/2006

Sale of Advertising Space or Time : Sale of media in television and radio by a broadcasting agency or organization is taxable under Section 65(105)(zk). Services provided by advertising agencies are taxable under Section 65(105)(e).

This entry proposes to levy service tax on sale of time or space for advertisement, excluding sale of space for advertisement in print media. Sale of advertising time in television and radio by any person other than broadcasting agency or organization is also covered under this sub-clause. Some of the other modes of advertisement covered under this mode are internet advertisement, advertisement on buildings, vehicles, etc., advertisement in motion pictures, television serials, video and music albums, mobile phones, ATMs, films and television serials (known as product placement). It may be noted that advertisement in print media is excluded.

Service Tax on advertising

Trade Notice No. 114/96, dated 1-11-1996 of the Mumbai-II Commissionerate

Advertising Agencies

- (1) It is to be noticed that the scope of the service which is included in the tax net extends not only to any service connected with making, preparation of advertisements but also includes any service connected with display or exhibition of advertisements.
- (2) It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of advertisement or gets it done through another person.
- (3) It has been represented that in many cases the . advertising agency gets a documentary or film prepared by an independent film producer on behalf of the client. In such cases, the film producer deals with the advertising agency and the payment to him is also made by the advertising agency and not by the client directly. Ultimately, however, the advertising agency charges the client for the amount paid to the film producer. the advertising agency will no doubt include the expenses incurred on getting the film or documentary produced on behalf of the client in the gross amount charged from the client on which service tax will be collected by the agency. it goes without saying that if the film producer chooses to charge the client directly for the film or documentary produced by him then the film producer is to be regarded as having rendered service to the client in relation to advertisement and he will, therefore, be liable to pay service tax accordingly.
- (4) Directorate of Audio and Visual Publicity (DAVP) in the Ministry of Information and Broadcasting is liable to pay service tax on services rendered by it to the different Departments of the Central Government in relation to Government advertisements.

Que

- 1) Mr. S prepares Signboard for which amount charged Rs. 2000
- 2) Yellow pages displays the advertisement of Manoj Batra IDT classes for which amount charged Rs. 3000.
- 3) Bright Professional has approached to Mr. Roni an agent of Yellow Pages which will be displayed in yellow pages. Roni charged Rs. 3000 including 500 as his commission.
- 4) PVR cinema hall displaying advertisement of Manoj Batra IDT classes in the beginning and during interval the display of film Rs 7 lakh.
- 5) Manoj Batra IDT classes approaching to Delhi Metro For display of advertisement at various Metro Stations and in Metro Rs. 25 lakh
- 6) Google/ CA Club India displaying advertisement of Manoj Batra Coaching institute by charging Rs 25 lakh.
- 7) Manoj Batra IDT Classes approached Lintas to prepare and display advertisement at Television for which charged Rs. 70 lakh.
- 8) Directorate of Audio and Visual Publicity (DAVP) in the Ministry of Information and Broadcasting providing advertising service to Department of Central Government in relation to government advertisement. For Rs 25 lakh.

Ans

- 1) Mr. S can't be considered as advertising agency as he is engaged only in making & preparation activity and not in exhibition/ display activity. No service tax liability. [STAR NEON SIGNS 2002- CESTAT]
- 2) Yellow pages is only displaying advertisement and not involved in making, preparation. Hence not liable to pay service tax in advertising agency. But presently new service sale of space or time for advertisement has been introduced but still outside the scope of service tax, because advertisement in print media has been specifically excluded.
- 3) Mr. Roni is not an advertising agent. Only booking advertisement for displaying. Hence not liable to pay service tax in advertising service. But it is taxable under business auxiliary service.
- 4) PVR is only displaying advertisement and not involved in making, preparation. Hence not liable to pay service tax in advertising agency. But presently new service sale of space or time for advertisement has been introduced. Hence this service will be taxable under sale of space or time for advertisement.
- 5) Delhi Metro is only displaying advertisement and not involved in making, preparation. Hence not liable to pay service tax in advertising agency. But presently new service sale of space or time for advertisement has been introduced. Hence this service will be taxable under sale of space or time for advertisement.
- 6) Google/ CA Club India is only displaying advertisement and not involved in making, preparation. Hence not liable to pay service tax in advertising agency. But presently new service sale of space or time for advertisement has been introduced. Hence this service will be taxable under sale of space or time for advertisement.
- 7) Lintas is engaged in making, preparation and displaying activity also. Hence liable to service tax in advertising agency service.
- 8) DAVP is liable to pay service tax because advertising agency can be any person whether having profit motive or not.

(12) CONSTRUCTION SERVICE – PREFERENTIAL LOCATION OR DEVELOPMENT SERVICES

(i) Taxable service

Means any service provided or to be provided

to a buyer, by a builder of a residential complex, or a commercial complex, or any other person authorised by such builder, for providing preferential location or development of such complex but does not include services

Covered under sub-clauses

(zzg), MANAGEMENT, MAINTENANCE OR REPAIR SERVICE

(zzq), COMMERCIAL OR INDUSTRIAL CONSTRUCTION

(zzzh) CONSTRUCTION OF COMPLEX SERVICE

and in relation to parking place.

Explanation. — For the purposes of this sub-clause, “preferential location” means any location having extra advantage which attracts extra payment over and above the basic sale price;]

(ii) CBEC CLARIFICATION

334/1/2010—Special services provided by builder etc. to the prospective buyers such as providing preferential location or external or internal development of complexes on extra charges.

- (1)** Construction of commercial or industrial structures was brought under service tax net in 2004 while construction of residential complexes became a taxable service in 2005. The scope of the existing services includes construction, completion and finishing, repairs, alterations, renovation or restoration of complexes. It has been reported that in addition to these activities, the builders of residential or commercial complexes provide other facilities and charge separately for them and these charges do not form part of the taxable value for charging tax on construction. These facilities include,-
 - (a) prime/preferential location charges for allotting a flat/commercial space according to the choice of the buyer (i.e. Direction- sea facing, park facing, corner flat; Floor- first floor, top floor, Vastu- having the bed room in a particular direction; Number- lucky numbers);
 - (b) internal or external development charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc; (c) fire-fighting installation charges; and (d) power back up charges etc.
- (2)** Since these charges are in the nature of service provided by the builder to the buyer of the property over and above the construction service, such charges are being brought under the new service. *Charges for providing parking space have been specifically excluded from the scope of this service.* Development charges, to the extent they are paid to State Government or local bodies, will be would be excluded from the taxable value levy. Further, any service provided by Resident Welfare Associations or Cooperative Group Housing Societies consisting of residents/owners as their members would not be taxable under this service.

Que

Amount charged for providing Sea-Facing/ park- facing Flat by Builder of a residential complex having 10 Flats.	5
Amount charged for providing Sea-Facing/ park- facing Flat by Builder of a residential complex having 13 Flats.	8
Amount charged for providing lucky number shop by Builder of a commercial complex	6
Amount charged for providing parking place provided by Builder	7
Amount charged for developing/ maintain parks/ laying of sewerage & water pipelines, common lighting.	5
Amount charged for fire- fighting installation & Power Back up	10
Development charges paid to municipality	1
	42

Calculate Value of taxable service

Ans

Amount charged for providing Sea-Facing/ park- facing Flat by Builder of a residential complex having 10 Flats.	---
Amount charged for providing Sea-Facing/ park- facing Flat by Builder of a residential complex having 13 Flats.	8
Amount charged for providing lucky number shop by Builder of a commercial complex	6
Amount charged for providing parking place provided by Builder	---
Amount charged for developing/ maintain parks/ laying of sewerage & water pipelines, common lighting.	5
Amount charged for fire- fighting installation & Power Back up	10
Less- Development charges paid to municipality	(1)
Value of taxable service	28

(13) ASSET MANAGEMENT

(i) Taxable service

Means any service provided or to be provided

to any person, by any other person, **except**

⇒ a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in [BANKING AND OTHER FINANCIAL SERVICE]

in relation to asset management including portfolio management and all forms of fund management;

Portfolio management- The investor gives the amount to portfolio manager who makes purchase & sale on behalf of investor. In return portfolio manager gets management fees. The profit on purchase or sale will be of investor.

Fund management – this is similar to portfolio management. However instead of managing individual investor funds, here the management of certain funds like Army Navy funds, Ex army funds, Ex service funds etc.

(ii) CBEC CLARIFICATION**Ministry clarification – 334/1/2007**

Asset management including portfolio management and all forms of fund management provided by a banking company or a financial institution including a NBFC or any other body corporate or commercial concern is leviable to service tax under banking and financial service. Similar services are also provided by individual service providers essentially to high net worth individuals. This taxable service proposes to cover separately, similar service provided by person other than those already covered under banking and financial service.

334/1/2010— Unit Linked Insurance Plans

3.1 Tax on insurers issuing Unit Linked Insurance Plans (ULIP) was imposed w.e.f. 1-6-2008. The taxable service is the “Management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plans (ULIP) scheme” by an insurer carrying life insurance business.

3.2 ULIPs are broadly similar to the mutual funds, except that they are required to segregate a certain part of the premium towards the life insurance of the plan holder. Further, unlike in the mutual fund industry, where the funds are managed by an independent Asset Management Company (which is a separate legal entity), in case of ULIP the funds are managed by the insurance company itself. Thus, it is difficult to ascertain the component of the total charges that is attributable to the management of investment.

3.3 Accordingly, for the purpose of valuation for charging of Service tax, an Explanation was prescribed which in brief, explained that the taxable value for the purpose of this service is the difference between the (a) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and (b) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment. In other words the differential amount was considered as the charges for asset management.

3.4 It is however a fact that the amount appropriated by the insurance company is not only asset management but for various activities, such as,-

(a) Premium Allocation Charge : is an upfront deduction from the policy premium, which is generally more than 10% in the first year of ULIP, and continues to be very high for the initial three years. This amount is used for following purposes :

(i) Initial expenses in marketing the issue, including commission paid to distributors.

(ii) Cost of conducting medical check up of the ULIP holder and other miscellaneous charges.

(b) Policy administration charges; monthly charges for managing the paperwork and other formalities for the insurance, and are not related to asset management. It is chargeable to Service tax under insurance services.

(c) A number of other charges are also charged by the insurance companies, which, *inter alia*, include, policy surrender charges, switching charges, partial withdrawal charges, miscellaneous charges etc.

(d) Fund management charges: *This is the amount charged by the insurance company for managing the investible funds, which is intended to be taxed under this service.* This amount has been capped for ULIPs by Insurance Regulatory and Development Authority (IRDA) at 1.5% of the gross yield for schemes below 10 years, and 1.25% for schemes above 10 years.

3.5 Since the charge pertaining to asset management alone should form the value for taxable purpose, the explanation provided under the definition of the taxable service is being suitably amended to provide that the value of the taxable service for any year of the operation of policy shall be the actual amount charged by the insurer for management of funds under ULIP or the maximum amount of fund management charges fixed by IRDA, whichever is higher.

3.6 The method of computation for monthly payment of tax by such service providers, would be prescribed at the appropriate time.

(14) MINING OR MINERAL OIL OR GAS SERVICE

(i) Taxable service

Means any service provided or to be provided to any person, by any other person in relation to mining of mineral, oil or gas;

(ii) CBEC CLARIFICATION

(a) 334/1/2007—

(1) Mining Service [section 65(105)(zzzy)] : Presently, geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas are leviable to service tax under “survey and exploration of mineral service” [section 65(105)(zzv)]. Services such as -

- ⇒ site formation and clearance, and excavation and earth moving, drilling wells for production/exploitation of hydrocarbons (development drilling)
- ⇒ well testing and analysis services
- ⇒ sub-contracted services such as deploying workers and machinery for extraction/breaking of rocks into stones, sieving, grading, etc.
- ⇒ outsourced services,

provided for mining are individually classified under the appropriate taxable service. Services provided in relation to mining of mineral, oil and gas are comprehensively covered under this proposed service. With this, services provided in relation to both exploration and exploitation of mineral, oil or gas will be comprehensively brought under the service tax net.

Particulars	Taxable service before Mining service taxability	Presently taxable in
Excavation/drilling and removal of the overburdens (i.e. stratum, layer of mud, boulders, etc, that needs to be removed during or prior to extraction of coal/minerals).	site formation and clearance, excavation and earth-moving and demolition	Mining service
Coal cutting or mineral extraction and lifting them up to the pithead.	-----	Mining service
Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mines.	cargo handling service	Mining service

Que

Particulars	Amt in lakh
Excavation/drilling and removal of the overburdens (i.e. stratum, layer of mud, boulders, etc, that needs to be removed during or prior to extraction of coal/minerals).	5
Coal cutting or mineral extraction and lifting them up to the pithead	5
Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mines.	8
well testing and analysis services	6
sub-contracted services such as deploying workers and machinery for extraction/breaking of rocks into stones, sieving, grading,	11
geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas	5
Total value	40

Calculate value of taxable service under mining service

Ans- after introduction of mining service, any service provided in relation to mining will be classified under mining service.

Particulars	Amt in lakh
Excavation/drilling and removal of the overburdens (i.e. stratum, layer of mud, boulders, etc, that needs to be removed during or prior to extraction of coal/minerals).	5
Coal cutting or mineral extraction and lifting them up to the pithead	5
Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mines.	8
well testing and analysis services	6
sub-contracted services such as deploying workers and machinery for extraction/breaking of rocks into stones, sieving, grading,	11
geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas	5
Total value	40

(15) MANAGEMENT, MAINTENANCE OR REPAIR

(i) Taxable service

Means any service provided or to be provided

[to any person], by any person in relation to [management, maintenance or repair];

management, maintenance or repair” means any service provided by —

- (i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorised by him, in relation to, —
 - a. management of properties, whether immovable or not;
 - b. maintenance or repair of properties, whether immovable or not; or
 - c. maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]

[Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

- (a) “goods” includes computer software;
- (b) “properties” includes information technology software

(ii) EXEMPTION

Roads — Exemption from Service Tax to management, maintenance or repair of roads-- *[Notification No. 24/2009-S.T., dated 27-7-2009]*

CG exempts the taxable service, provided to any person by any other person in relation to management, maintenance or repair of roads, from the whole of the service tax leviable thereon under section 66 of the said Finance Act.

(iii) CBEC CLARIFICATION

96/7/2007

Services provided by any person to a customer in relation to management, maintenance or repair is liable to service tax [section 65(105)(zzg)]. “Manage-ment, maintenance or repair” includes main-tenance or repair of any goods, excluding motor vehicle [section 65(64)]. Whether maintenance or repair of software is liable to service tax?	Explanation to section 65(64) provides that “goods” includes computer software. Since, maintenance or repair of any goods is liable to service tax, services provided in relation to maintenance or repair or servicing of computer software is liable to service tax under “management, maintenance or repair” service [section 65(105)(zzg)].
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B 1/6/2005— Maintenance or repair service

- (1) Prior to 16-6-2005, such services covered maintenance or repair or servicing of any goods or equipment, excluding motor vehicles. However, since 16-6-2005, services relating to maintenance or management of immovable property (such as roads, airports, railways, buildings, parks, electrical installations and the like) have also been covered under the purview of service tax. Such services would be taxable when provided

under a contract or an agreement by any person or by a manufacturer or any person authorized by a manufacturer.

- (2) Maintenance is to keep a machine, building etc. in a good condition by periodically checking and servicing or repairing. While repair is a one time activity, maintenance is a continuous process of which repairing may be incidental or ancillary.
- (3) Prior to 16-6-2005, maintenance or repair carried out under a maintenance contract or agreement was covered under service tax. Repair or servicing carried out under a contract other than a maintenance contract or agreement was not covered within the purview of service tax. Maintenance or repair, including reconditioning or restoration or servicing of any goods or equipment, except motor vehicle (which is taxable under the category of authorized service station), undertaken as part of any contract or agreement (not necessarily maintenance contract or agreement) is now liable to service tax under this category of taxable service. To attract service tax under this category, the contract or agreement need not necessarily be a maintenance contract/ agreement.

59/8/2003

Maintenance and repair Services :

- (1) Certain doubts have been raised in case of maintenance and repair services as to whether service tax on maintenance and repair would be charged in cases where during the guarantee period, the services are provided to the buyer of the goods while the payments for the same are received from the supplier of the goods. In this regard it is clarified that irrespective of the fact that the receiver of the service is different from the person making payments for such services, the service tax is leviable on the services provided towards maintenance and repair. Therefore, for the services provided during the warranty period by the dealer or any other authorized person, service tax would also be leviable on any amount received by such dealer or such other authorized person from manufacturer of such goods.

Particulars	Amt in lakh
Repair of ship/Machine/ Transformer from Manufacturer	5
Repair of ship/Machine/ Transformer from person authorized by Manufacturer	5
Repair of Motor Vehicle by authorized service station	8
Management of Power-Plant of Tata Power	6
Amount charged by Owner of building received rent of building Rs It includes maintenance charges for Building Rs 2 lakh in addition to rent.	11
Reaire, maintenance of Road	5
Repair, maintenance of Bridge	10
Repair of old cylinder for IOCL/ BPCL/ HPCL	1
Repair of machinery during guarantee period free of cost to customers for which reimbursement given by manufacturer	2
Repair of equipment for which was no maintenance agreement was entered into	3
Maintenance of computer software	2
Maintenance of IT software.	5
	63

Calculate the value of taxable service under management, maintenance or repair service.

Ans

Particulars	Amt in lakh
Repair of ship/Machine/ Transformer from Manufacturer	5
Repair of ship/Machine/ Transformer from person authorized by Manufacturer	5
Repair of Motor Vehicle by authorized service station (w.n-1)	----
Management of Power-Plant of Tata Power	6
Amount charged by Owner of building received rent of building Rs It includes maintenance charges for Building Rs 2 lakh in addition to rent.	2
Repair, maintenance of Road (W.N- 2)	----
Repair, maintenance of Bridge	10
Repair of old cylinder for IOCL/ BPCL/ HPCL	1
Repair of machinery during guarantee period free of cost to customers for which reimbursement given by manufacturer	2
Repair of equipment for which was no maintenance agreement was entered into	3
Maintenance of computer software	2
Maintenance of IT software.	5
Value of taxable service	40

Working notes

- (1) Repair of motor vehicle not covered under Management, maintenance or repair service but it is covered under authorize service station service.
- (2) Repair, maintenance of road is exempt but in respect of bridge is taxable.

(16) TELECOMMUNICATION SERVICE

(i) Taxable service

⇒ Means any service provided or to be provided

⇒ to any person, by the telegraph authority in relation to telecommunication service;

“telecommunication service” means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885) and includes —

- (i) voice mail, data services, audio tex services, video tex services, radio paging;
- (ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;
- (iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;
- (iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;
- (v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic callback, call answer, voice mail, voice menus and video conferencing;
- (vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;
- (vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and
- (viii) communication through facsimile, pager, telegraph and telex,

but does not include service provided by —

- (a) any person in relation to on-line information and database access or retrieval or both referred to in sub-clause (zh) of clause (105);
- (b) a broadcasting agency or organisation in relation to broadcasting referred to in sub-clause (zk) of clause (105); and
- (c) any person in relation to [internet telecommunication service] referred to in sub-clause (zzzu) of clause (105);]

Author note- on-line information and database access or retrieval or both, broadcasting, internet telecommunication service are taxable under respective service. But these are not in CA final course [presently 28 services are in course]

“**telegraph**” has the meaning assigned to it in clause (1) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885);

“**telegraph authority**” has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885) and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act;

“**telex**” means a typed communication by using teleprinters through telex exchanges;

“**pager**” means an instrument, apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages;

“**facsimile (FAX)**” means a form of telecommunication by which fixed graphic images, such as printed texts and pictures are scanned and the information converted into electrical signals for transmission over the telecommunication system;

A pager is a small telecommunications device that receives (and, in some cases, transmits) alert signals and/or short messages. This type of device is convenient for people expecting telephone calls, but who are not near a telephone set to make or return calls immediately.

A typical one-way pager fits easily in a shirt pocket; some are as small as a wristwatch. A miniature, short-range wireless receiver captures a message, usually accompanied by a beep. (This is why the device is also known as a beeper). The simplest one-way pagers display the return-call telephone number of the person who sent the message. Alternatively, a code can be displayed that indicates which of several designated parties is requesting a return phone call. Sophisticated one-way pagers can display short text messages.

a two-way pager, also called a two-way messaging device or two-way interactive system, has been developed. Mobile phones have replaced pagers for most users.

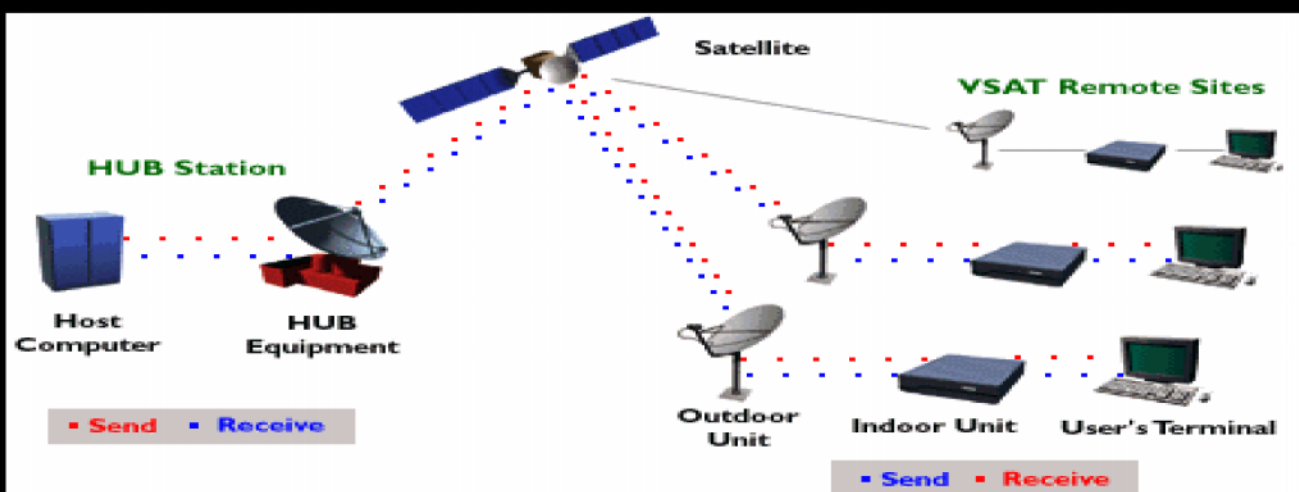
A fax (short for *facsimile* and sometimes called *telecopying*) is the telephonic transmission of scanned-in printed material (text or images), usually to a telephone number associated with a printer or other output device. The original document is scanned with a fax machine, which treats the contents (text or images) as a single fixed graphic image, converting it into a bitmap. In this digital form, the information is transmitted as electrical signals through the telephone system. The receiving fax machine reconverts the coded image and prints a paper copy of the document.

Under Telex message has to be typed by the user and this typed message is sent through telephone lines.

A telegraph is a communications system in which information is transmitted over a wire through a series of electrical current pulses, usually in the form of Morse code. It is a short message for which one has to go to telegram office and fill application form for sending that message. Generally pre-designed short message are also given against which code of that message is given which is to be filled in form.

1. **Speech Circuits (Hot Line or P-Wire)** - Local or Long distance circuits within two locations in a city or between two different cities provided for the same applicant. The Terminating equipment at both ends is telephone without dialing facility. Both way signaling and speech is possible.
2. Data circuit- e.g broad band

transceiver that is placed outdoors in direct line of sight to the satellite and a device that is placed indoors to interface the transceiver with the end user's communications device, such as a PC. The transceiver receives or sends a signal to a satellite transponder in the sky. The satellite sends and receives signals from a ground station computer that acts as a hub for the system. Each end user is interconnected with the hub station via the satellite, forming a star topology. The hub controls the entire operation of the network. For one end user to communicate with another, each transmission has to first go to the hub station that then retransmits it via the s



Person liable for paying Service Tax–Rule 2(1)(d)

Mean

in relation to telecommunication service shall be

- a) the director general of posts and telegraphs, or
- b) the chairman-cum-managing director, Mahanagar Telephone Nigam Ltd. Delhi or
- c) any other person who has been granted a license by the central government.

As per rule 6(1)(ii) of Valuation Rules 2006

The value of taxable service shall include the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application **for telephone connection or pager** etc.

As per rule 6(2)(i) of Valuation Rules 2006

The value of any taxable service **does not include initial deposit made by the subscriber** at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or leased circuit ;

CBEC CLARIFICATION

(i) 334/1/2008 Internet Telecommunication Service :

- (1) In budget 2007-08, six separate taxable services (telephone, pager, leased circuit, telegraph, telex and fax) related to telecommunication were merged into a single taxable service namely telecommunication service. Telecommunication service was comprehensively defined so as to include all services provided in relation to telecommunication.
- (2) Telecommunication services are also provided through internet. Services provided by any person in relation to internet telephony is leviable to service tax [Section 65(105)(zzzu)].
- (3) Proposal is to define comprehensively internet telecommunication service and omit the present definition of internet telephony service. It may be noted that,-
 - (a) the present 'internet telephony service' shall get subsumed with in the proposed 'internet telecommunication service' [Section 65(105)(zzzu)];
 - (b) Internet telecommunication service includes,-
 - (i) internet backbone services, including carrier service of internet traffic by one Internet Service Provider (ISP) to another ISP,
 - (ii) internet access services, including provision of a direct connection to the internet and space for the customer's web page, and
 - (iii) telecommunication services, including fax, telephony, audio conferencing and video conferencing, provided over the internet.
- (4) Service provided by ISPs for accessing the internet through the computer network shall be specifically covered under the proposed service. At present, this service is covered under 'On-line information and database access or retrieval service'.

(ii) NN 96/7/2007

Whether service tax is liable on the amount collected as surcharge for delayed payment of telephone bills?	An amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and, therefore, does not form part of the value of taxable service under section 67 read with Service Tax (Determination of Value) Rules, 2006.
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(iii) Interconnect Usage Charges (IUC) — Clarifications on Service tax applicability

Circular No. 91/2/2007-S.T., dated 12-3-2007

service tax on interconnection service provided by one telecom operator to another

The interconnection service is provided by one telegraph authority to another to enable the telephone subscribers of these telegraph authorities to connect with each other. Interconnection in technical terms means the commercial and technical arrangements under which service providers connect their equipment, networks, and services to enable their customers to have access to the customers, services, and networks of other service providers. For providing interconnection, the telegraph authority collects interconnect usage charges (IUC). A question has been raised as to whether this service is taxable and accordingly, whether service tax is applicable to IUC.

2. In past, divergent clarifications/instructions have been issued on this matter. However, in view of representations and submissions of service provider, the issue of taxability of IUC has been examined a fresh, in consultation with service providers through the Cellular Operators Association of India.

3. As stated above, the interconnection usage service is provided by one telegraph authority to another telegraph authority. In terms of the existing definition, in the Finance Act, 1994, **"telephone service" means any service provided to a subscriber** by the telegraph authority in relation to a telephone connection. The **subscriber means a person to whom any service of a telephone connection** has been provided by the telegraph authority. Therefore, a subscriber in respect of telephone service is the person who avails of service of telephone connection. While providing service of interconnection usage, no service of telephone connection is provided to recipient telegraph authority. No doubt, it is a service in relation to a telephone connection; however, as long as service is not provided directly to a subscriber (as mentioned above), the service may not fall in the category of telephone service. Therefore, IUC would not be taxable under the category of service.

4. However, vide Finance Bill, 2007, a new definition of 'tele-communication service' has been incorporated vide clause (104) of section 65 of the Finance Act, 1994 and IUC has been specifically incorporated in the definition of 'telecommunication service' to make it a taxable service. Further, any service provided or to be provided, to any person, by a telegraph authority in relation to 'telecommunication service' has been made taxable. This amendment will come into effect from a date to be notified by the Government after enactment of Finance Bill, 2007. Therefore, after this amendment comes into effect, service tax would be applicable to IUC charges.

334/1/2007

1. Telecommunication Service : Following telecommunication related services, which are presently specified as separate taxable services, namely :

- (i) telephone connection [sub-clause (b) of section 65(105)]
- (ii) pager [sub-clause (c) of section 65(105)]
- (iii) leased circuit [sub-clause (zd) of section 65(105)]
- (iv) communication through telegraph [sub-clause (ze) of section 65(105)]
- (v) communication through telex [sub-clause (zf) of section 65(105)]
- (vi) facsimile communication [sub-clause (zg) of section 65(105)]

are being merged under the proposed "telecommunication service" [sub-clause (zzzx) of section 65(105)], and the term "telecommunication service" [section 65(109a)] is being defined comprehensively. Specific inclusion and exclusion of telecom services may be seen in the definition.

2. Services provided by the telegraph authority to any person in relation to telecommunication are covered under this service. It may be noted that the present condition namely, recipient of service needs to be a subscriber, under telecommunication related services has been changed under the proposed Telecommunication Service. Telecommunication Service includes services provided to any person and not confined only to subscriber.

International in-bound roaming liable to Service tax under Telephone Service — Clarifications

During the period of roaming, the Indian telecom service provider provides telephone service to an international in-bound roamer. This service to in-bound roamers is delivered and consumed in India and, therefore, it is not an export of service. International practice treats the telephone service provided to an in-bound roamer by the visited network, for purposes of taxation, in the same manner as a telephone service provided to any home subscriber.

Accordingly, the domestic telecom operators providing roaming service to international in-bound roamers are liable to pay service tax on the amount received through the home network on account of service provided to such international roaming subscriber.

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Particulars	Amt in lakh
SMS/ VOICE SMS service provided	5
Amount charged as initial deposit from fixed land line phones Rs 15 lakh but amount adjusted with the bill out of initial deposit	5

Amount charged for cellular mobile telephone service	33
Charges for leased circuits	40
Speech circuit	4
Data circuit i.e broad band service	11
Telegraph circuits – VSAT	25
Amount recovered for call management service like call waiting, call forwarding, caller identification, conferencing, call display, call blocking, video conferencing etc.	12
Fax and pager service provided	8
Surcharge for delayed payment of telephone bills	10
Inter connection usage charges	1
Amount recovered from foreign telecom companies for services provided to clients of such foreign companies while they were in india on international roaming	2
On-line information and database access or retrieval service provided	3
Internet telecommunication charges	2
	121

CALCULATE VALUE UNDER TELECOMMUNICATION SERVICE

Particulars	Amt in lakh
SMS/ VOICE SMS service provided	5
Amount charged as initial deposit from fixed land line phones Rs 15 lakh but amount adjusted with the bill out of initial deposit	5
Amount charged for cellular mobile telephone service	33
Charges for leased circuits	40
Speech circuit 4	
Data circuit i.e broad band service 11	
Telegraph circuits – VSAT 25	
Amount recovered for call management service like call waiting, call forwarding, caller identification, conferencing, call display, call blocking, video conferencing etc.	12
Fax and pager service provided	8
Surcharge for delayed payment of telephone bills	---
Inter connection usage charges	1
Amount recovered from foreign telecom companies for services provided to clients of such foreign companies while they were in india on international roaming	2
On-line information and database access or retrieval service provided	---
Internet telecommunication charges	---
Value of taxable service	106

WORKING NOTES

1. AS per rule 6(2)(i) of valuation rules 2006 initial deposit will not form part of value, whereas as per Rule 6(1)(ii) of valuation rules 2006, adjustment with bill out of initial deposit form part of value of taxable service
2. Fax, pager, leased circuit are taxable under telecommunication service.
3. As per circular No. 96/7/2007, surcharge for delayed payment of telephone bill is not a consideration charged for provision of telecom service and not liable to service tax.
4. As per circular 91/7/2007, interconnect usage charges are liable to service tax.
5. International roaming is also liable to service tax are per circular 91/7/2007.
6. On-line information and database access or retrieval service and internet telecommunication are not taxable under this service but they are taxable under respective services. Since in present question value under telecommunication service is asked, hence they will not form part of value.